

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A SUPREME COURT
JUDGE: GREGORY P. HOLDER CASE NO.: SC03-1171
NO.: 02-487

DEPOSITION TRANSCRIPT

DEPOSITION OF: JEFFREY J. DEL FUOCO, AUSA

TAKEN AT: Regency Reporting Service, Inc.
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1 Thereupon, the following proceedings commenced:

2 (The witness was sworn.)

3 MR. LEE: Before we went on the record -- I'm Ralph
4 Lee with the United States Attorney's Office and to take
5 care of some housekeeping matters because Mr. Del Fuoco
6 is here, at least in part, as his Assistant United
7 States Attorney capacity; and the predicate for his
8 being here in that capacity involves certain procedures
9 whereby his testimony has to be requested from the U.S.
10 Attorney; and I'd like to enter into -- enter into the
11 record as a housekeeping matter and an introductory
12 matter what that has evolved to; and I'd like to mark it
13 as U.S. Attorney Exhibit 1 to the Del Fuoco deposition,
14 a letter dated December 18th to Mr. Charles Pillans
15 signed by Paul Perez, United States Attorney, that sets
16 forth the scope of testimony Mr. Del Fuoco is allowed to
17 provide in his capacity as an AUSA or Assistant U.S.
18 Attorney.

19 U.S. Attorney Exhibit 2 will be another December 18
20 letter. This one is to Virginia Z. Houser, again,
21 signed by Paul Perez, United States Attorney,
22 essentially standing for the proposition that
23 Mr. Holder -- Judge Holder's attorneys can inquire into
24 the same scope that Mr. Pillans has been approved to
25 inquire into; and U.S. Attorney Exhibit 3 is a letter

1 dated August 26th to David Weinstein signed by me on
2 behalf of Mr. Perez, which kind of summarized what that
3 scope means in the sense that we are aware that Mr. Del
4 Fuoco is also here to talk about matters that are
5 outside his capacity as an AUSA and to clarify what the
6 U.S. Attorney scope letter means in that regard; and
7 Mr. Del Fuoco is the -- being the witness who is subject
8 to that scope may have questions concerning whether his
9 answers fall with or within -- or outside the scope, and
10 the parties have agreed that he can confer with me in
11 that matter on -- for those kind of matters but not
12 regarding the substance of his testimony, and we've
13 agreed to proceed.

14 Anything else you wanted to add, Mr. Weinstein?

15 MR. WEINSTEIN: No, sir. We have no objection to
16 that procedure. Mr. Pillans apparently concurs. As
17 another housekeeping item, we can mark as a composite
18 exhibit -- I don't care --

19 We haven't went through it in consecutive exhibits,
20 have we, Charlie?

21 -- Respondent's Exhibit Number 1, a composite
22 exhibit, our three subpoenas that were served on Mr. Del
23 Fuoco, each dated August 17th, 2004, and one served on
24 Mr. Del Fuoco in as his capacity as an AUSA; one in his
25 capacity as an Army Reserve Officer, one as a private

1 citizen.

2 And there's copies here, Steve. If you could
3 provide them to Charlie, I'd appreciate it.

4 MR. PILLANS: One housekeeping matter -- It's
5 really not my concern; but Mr. Del Fuoco had mentioned
6 it to me that these subpoenas, I believe, have your home
7 address on them, do they not?

8 THE WITNESS: I believe, yeah.

9 MR. WEINSTEIN: Would you like that redacted,
10 Mr. Del Fuoco?

11 THE WITNESS: If we could.

12 MR. WEINSTEIN: I'll be happy to stipulate to that,
13 Charlie.

14 MR. PILLANS: I don't know that these do --

15 MR. WEINSTEIN: The returns do.

16 MR. PILLANS: -- but the returns do.

17 THE WITNESS: If we could --

18 MR. WEINSTEIN: Sure. No problem. In fact, if
19 there's any personal information, you know, I understand
20 the position that you're in. If you want to have, you
21 know, keep out -- I don't intend to file this
22 deposition. I'm sure we can work something out.

23 THE WITNESS: I understand. No problem. I
24 understand.

25 (Marked by the court reporter as U.S. Attorney's

1 Exhibit Numbers 1, 2 and 3.)

2 (Marked by the court reporter as Respondent's

3 Exhibit Number 1.)

4 Thereupon,

5 JEFFREY J. DEL FUOCO,

6 a witness, having been first duly sworn, upon his oath,

7 testified as follows:

8 EXAMINATION

9 BY MR. WEINSTEIN:

10 Q Mr. Del Fuoco, my name is David Weinstein. Along
11 with Mr. Cottreau, we're here representing Judge Holder in a
12 JQC proceeding. Could you state your full name for the
13 record, sir?

14 A Jeffrey J. Del Fuoco.

15 Q Mr. Del Fuoco, could you give me your work address,
16 please, sir?

17 A My work address is 400 North Tampa Street, Suite
18 3200, Tampa, Florida 33602.

19 Q And what is that the address of?

20 A That's the address for the Office of the United
21 States Attorney for the Middle District of Florida, Tampa
22 Division.

23 Q Okay. How long have you been with that office,
24 sir?

25 A I've been in that office -- In January will be ten

1 years.

2 Q Here in the Middle District?

3 A Yes.

4 Q And prior to that, sir?

5 A Prior to that I was the Associate General Counsel
6 for Criminal Law in Enforcement Operations with the United
7 States Marshall Service for approximately two-and-a-half
8 years.

9 Q Thank you, sir. So early '90s to approximately
10 '94?

11 A Yeah. Yeah. About '93 -- Actually, about early
12 '93 to '95 when I came to the U.S. Attorney's Office in
13 Tampa.

14 Q Okay. And before that, sir, in terms of your
15 career?

16 A Before that I was a Special Assistant United States
17 Attorney in the Eastern District of Virginia. I was
18 detailed to the Justice Department in that capacity. I was
19 in an active-duty U.S. Army JAG who was detailed in the
20 Justice Department to prosecute Defense procurement, fraud
21 and corruption.

22 Q Okay. And can you give me an approximate time
23 frame, please?

24 A Approximately, October of '89 to about February of
25 '93 approximately.

1 Q Okay. Prior to that, sir?

2 A Prior to that I was in private practice for a short
3 period of time in Philadelphia as a criminal defense
4 attorney primarily, and before then I was a Deputy Attorney
5 General with the Organized Crime and Racketeering Task Force
6 with the New Jersey Division of Criminal Justice.

7 Q Before that law school?

8 A Before that I was an active-duty U.S. Army Judge
9 Advocate assigned with the U.S. Army Trial Defense Service
10 at Fort Dix, New Jersey; and before that law school.

11 Q Mr. Del Fuoco, you were served with three
12 subpoenas. Is that why you're here today?

13 A Yes, sir.

14 Q Okay. In all three capacities, sir?

15 A I believe so, yeah.

16 Q Okay. Have you ever had your deposition taken
17 before?

18 A Yes.

19 Q Okay. Can you tell me when?

20 A May I consult just for a second?

21 Q Sure.

22 (A brief pause was had.)

23 A Respectfully, Mr. Weinstein, I've conferred with
24 Mr. Lee; and he's indicated to me that any answer to that
25 question would be outside the scope of the U.S. Attorney's

1 authorization.

2 BY MR. WEINSTEIN:

3 Q Okay. Have you ever had your deposition taken in
4 any civil -- in any civil proceeding not involving your work
5 as an Assistant United States Attorney?

6 A No.

7 Q To whom have you spoken about -- regarding today's
8 deposition? In answering this question, I'm not seeking the
9 content of any communications between you and another member
10 of the United States Attorney's Office. Other than that,
11 sir, who have you spoken to?

12 A I'm sorry. I don't mean to be obstructious. Can I
13 ask a question?

14 (A brief pause was had.)

15 A All right. Thank you. I have spoken to Warren
16 Zimmerman, who is the Chief of the Civil Division and my
17 boss at the U.S. Attorney's Office; and I spoke to Jeffery
18 Downing, who is an Assistant United States Attorney in my
19 office.

20 BY MR. WEINSTEIN:

21 Q Would the contents of those communications be
22 outside the scope of your permitted testimony today?

23 A I believe so.

24 Q And you understand part of my job here, Mr. Del
25 Fuoco --

1 A Oh, yeah.

2 Q -- is to make a record?

3 A I understand.

4 Q Okay.

5 A I understand.

6 Q Have you spoken to Mr. Pillans about your

7 deposition today?

8 A I've only spoken to Mr. Pillans about the fact that

9 I was going to be here today.

10 Q No deposition preparation, sir?

11 A No, none whatsoever.

12 Q Have you reviewed any documents in preparation for

13 your deposition today?

14 A I have reviewed some documents.

15 Q Okay. Could you tell me what those are, please?

16 A Yes. They are the documents that are Bate stamped,

17 and I'm certain you have a copy of them. I think they're

18 Bate stamped KELjd 1 through 171.

19 Q Okay. Any other documents?

20 A I've reviewed two -- copies of two statements that

21 I've rendered that are germane to the case.

22 Q Okay. Tell me about those, please.

23 A One statement, I believe, was given in early 2003

24 to Colonel David Leta, who was -- was an Air Force

25 investigator investigating this matter.

1 Q Okay.

2 A And another statement that I reviewed was a
3 statement that I prepared in response to a request from the
4 Judge Advocate General of the Air Force in -- I believe it
5 was October of 2003 concerning Exhibits 1 through 171.

6 Q Okay. Memo note to Colonel Jaster?

7 A Colonel Jaster, yes, sir, who is kind of like the
8 executive for the Air Force TJ.

9 Q Right. Anything -- Anything other than the Bate
10 stamped documents and the two -- the one affidavit and the
11 one statement that you've looked through?

12 A No, sir.

13 MR. LEE: I'll just interject for the record. I
14 did show him a copy of Exhibit 3 to aid him in
15 understanding the scope of his testimony.

16 MR. WEINSTEIN: Understood. I appreciate the
17 clarification.

18 BY MR. WEINSTEIN:

19 Q We talked about depositions, Mr. Del Fuoco. Have
20 you been a party or a witness in any -- in any proceeding
21 outside the scope of your duties as an Assistant United
22 States Attorney?

23 A In a proceeding?

24 Q In other words, a piece of civil litigation,
25 administrative proceeding, a criminal case where you were

1 the victim?

2 A I have been a party in a divorce proceeding in
3 Pinellas County Circuit Court. There was never any
4 testimony or depositions taken in that proceeding, and I
5 recall back in -- Jeez. Let me think. I believe it was
6 back in 1987 -- and this is a guesstimate here --

7 Q Okay.

8 A -- I testified in a civil trial in the United
9 States District Court in Philadelphia as a witness in -- I
10 believe it was a 1983 suit against several officers of the
11 Philadelphia Police Department.

12 Q Have you ever been a party to any piece of
13 litigation either within or without your capacity as a
14 U.S. -- Assistant United States Attorney?

15 A Yes. I'm sorry. Excuse me. I am presently a
16 plaintiff in a lawsuit.

17 Q Okay. Could you tell me about that, please, sir?

18 A Yes. It -- I am the plaintiff in a lawsuit
19 involving the Manatee County Sheriff's Office.

20 Q Okay. Let's talk about that. We'll come to that
21 in a moment. How long have you been involved in public
22 corruption matters, sir?

23 A Well, let's see. Pretty much -- Well, I'm sorry.
24 I'm not trying -- Define what you mean by that.

25 Q I'd be happy to. How long have you been involved

1 during your legal career in investigating or prosecuting
2 public officials accused of wrongdoing?

3 A Off and on -- Off and on approximately fifteen
4 years approximately.

5 Q As a result of your work, have any public officials
6 lost their jobs?

7 A Have they lost their jobs?

8 Q Right. Either because they were sent to jail or
9 fired other otherwise lost their jobs?

10 A I believe so.

11 Q Okay. Any of these officials blamed you for the
12 resulting consequences?

13 A I don't know what to say to that. Probably. You
14 know, I've never had anybody overtly blame me for that
15 occurring; but I'm certain that they probably were unhappy
16 that it occurred. Let's put it that way.

17 Q Would it be fair to say, Mr. Del Fuoco, that the
18 civil case involving the Manatee County Sheriff's Office is
19 a case that resulted from retaliation against you by
20 officials that were unhappy about the work that you were
21 doing?

22 A That's my spin on it, yeah.

23 Q Is that what the court papers say? Let's -- We'll
24 keep the matter as public record and make it easy for you.
25 Do the court papers in that case claim a complaint by you

1 against certain current or former officials in the Manatee
2 County Sheriff's Office in which the general allegations are
3 that these folks did improper things to you or your family
4 as a result of public corruption work that you were doing?

5 A Yes.

6 Q Okay. And isn't it fair to say, Mr. Del Fuoco,
7 that in terms of what's public record in that case that law
8 enforcement officers retaliated against you and your family
9 for work that you did in connection with public corruption?

10 A Yes.

11 Q Is the same true with respect to the investigation
12 that you did against the Plant City Police Department? Did
13 you suffer any retaliation of any kind, you or your family,
14 as a result of work that you did in connection with that
15 case?

16 A Can I consult just for a second?

17 Q Certainly.

18 (A brief pause was had.)

19 A I'm sorry, Mr. Weinstein. Could you ask the
20 question?

21 BY MR. WEINSTEIN:

22 Q Yes. Would it be fair to say that you were the
23 subject of some retaliation of any kind, you or your family,
24 as a result of work that you did in investigating or
25 prosecuting public corruption in Plant City?

1 A Yes.

2 Q And isn't it a fact, Mr. Del Fuoco, that you've
3 become -- you were retaliated against for ethical complaints
4 that you've made within the U.S. Attorney's Office?

5 A I think that's beyond the scope.

6 Q Okay. Sir, were you transferred at some point
7 during your career out of the public corruption section of
8 the U.S. Attorney's Office?

9 (A brief pause was had.)

10 A Yes.

11 BY MR. WEINSTEIN:

12 Q And was that transfer against your will, sir?

13 (A brief pause was had.)

14 BY MR. WEINSTEIN:

15 Q Let me rephrase the question, maybe make it easier.

16 A That's fine.

17 Q Did you request that transfer, sir?

18 A I did not request that transfer.

19 Q Okay. At some point during your career, were you
20 transferred out of the criminal section of the United States
21 Attorney's Office to the civil division of the United States
22 Attorney's Office?

23 A Yes.

24 Q Did you request that transfer, sir?

25 A No.

1 Q Okay. Would it be fair to say, Mr. Del Fuoco, that
2 you've been the subject of retaliation even within the
3 United States Attorney's Office for complaints that you've
4 made regarding public corruption or other ethical matters?

5 A May I?

6 Q Yes.

7 (A brief pause was had.)

8 A I've been advised that that's outside the scope of
9 the testimony.

10 MR. WEINSTEIN: Okay. And just for a housekeeping
11 matter, each time that the witness says, It's outside
12 the scope, we stipulate that that's a refusal to answer
13 because of the scope issues that we talked about so far?

14 MR. LEE: That's exactly what it means.

15 MR. WEINSTEIN: Okay. Thank you.

16 MR. LEE: And just to further to clarify, it's a
17 refusal to answer because it's outside of the scope, not
18 because of any necessary personal desire of the witness.

19 MR. WEINSTEIN: Understood.

20 BY MR. WEINSTEIN:

21 Q You moved to Tampa in approximately 1994, Mr. Del
22 Fuoco?

23 A Yeah. Late '94, early '95 to the Tampa Bay area.

24 Q Did you know of Judge Greg Holder or Colonel Greg
25 Holder prior to him becoming a judge in 1994?

1 A No, sir.

2 Q Okay. You first became aware of Judge Holder or
3 Colonel Holder -- If I say Judge Holder, you'll know I mean
4 Gregory P. Holder in either capacity?

5 A Yes. I understand.

6 Q Okay. Sir, did you become aware of Judge Holder
7 after he ascended to the bench from private practice?

8 A Actually, no.

9 Q Okay.

10 A Because I really -- And I want to be -- I don't
11 know if you'll understand this or not, but I really didn't
12 follow local politics or what was going on. I -- I didn't
13 know -- The bottom line is no, I didn't.

14 Q When did you first become aware of Judge Holder?

15 A Become aware of him?

16 Q That you knew who he was.

17 A Jeez. I want to say that sometime in 2003 or
18 thereabouts I became aware of who he was from seeing him, if
19 you will, from afar at like a JAG-type function and somebody
20 saying, That's Judge Holder; but, you know, I never really
21 knew -- I mean, I didn't know him. I didn't follow his
22 career. I didn't pay attention to who he was, and I still
23 don't know him.

24 Q And by not know him, you mean you've never met him
25 on a personal level?

1 A I've never met him on a personal level. I've been
2 in the same room with him on one occasion at a JAG
3 conference, I believe, in 2003.

4 Q Okay. When you first saw him at the -- at this JAG
5 event and someone said, That's Judge Holder, you knew who
6 that was by name?

7 A Yes.

8 Q Even if not by face?

9 A Yes.

10 Q When did you first become aware of Judge Holder by
11 name if not by -- if not by recognition, if you will?

12 A I first became aware of Judge Holder or the name,
13 the name Holder, I believe, when certain documents were left
14 at my Army Reserve Unit that, I think, that lead up to our
15 instant set of facts here.

16 Q Do you subscribe to the Tampa Tribune?

17 A Yes, sir. Or no. Excuse me. Do I subscribe to
18 it? No, I don't.

19 Q Get it in the office, Mr. Del Fuoco?

20 A No. They may get it in the office. I'm not sure.

21 Q Okay.

22 A I on occasion read it but -- but, you know, I don't
23 subscribe to it; and I don't read it in the office. Let's
24 put it that way.

25 Q Have you become aware over time that there have

1 been a number of newspaper articles about Judge Holder that
2 have appeared in the local press?

3 A In the past approximately -- In approximately the
4 past year, I have, yes. I've not read all of them; but I
5 know that this case has obviously been in the press; and
6 I've seen some of the articles, yeah.

7 Q Let me see if I can show you some printouts from
8 the Tampa Tribune --

9 A Okay.

10 Q -- that might -- that might jolt your memory about
11 some prior events.

12 MR. WEINSTEIN: And I'll mark them if the witness
13 recognizes any of these and if not -- If not, I won't.

14 BY MR. WEINSTEIN:

15 Q But here's a copy for you and your counsel, Mr. Del
16 Fuoco. This is a printout from the Tampa Tribune from a
17 November 15th, 1995, article where a defendant attempted to
18 escape from a courtroom and Judge Holder and a bailiff
19 chased after the defendant and caught him.

20 A Uh-huh.

21 Q Do you remember seeing any accounts of this
22 incident before?

23 A No, sir.

24 Q Doesn't ring any bell to you?

25 A No.

1 Q Okay. And here's another article, one for you and
2 your counsel.

3 MR. PILLANS: You going to mark these as exhibits?

4 MR. WEINSTEIN: No, not if the witness doesn't --
5 if you'd like me to, I'll mark them as a composite for
6 housekeeping.

7 BY MR. WEINSTEIN:

8 Q Here's one from 1986 regarding a -- regarding a
9 criminal case in which Judge Holder was the presiding judge.
10 Do you remember reading about this one?

11 A No.

12 MR. PILLANS: Don't take my silence as agreeing
13 these are relevant in any way.

14 A No, I don't recall.

15 MR. WEINSTEIN: Charlie, I wouldn't assume
16 anything.

17 BY MR. WEINSTEIN:

18 Q All right. Here's one from 1997 about an
19 unfortunate high-profile juvenile case in which a child was
20 unfortunately badly beaten in which Judge Holder got a lot
21 of publicity. Do you remember this one?

22 A No.

23 Q This incident?

24 A No. I guess I'm not as informed as I like to
25 pretend I am; but no, I don't recall.

1 Q Okay.

2 MR. PILLANS: You have a copy of that one for me?
3 About the child?

4 BY MR. WEINSTEIN:

5 Q Here's the next one, another 1997 juvenile case
6 involving Judge Holder.

7 A No, sir.

8 Q This one on a -- more update the topic --
9 Counsel -- on Judge Holder threatening a \$200,000 fine in a
10 case involving the Buccaneers?

11 A Let me put it -- I don't know if I've seen this. I
12 just don't recall. I don't think I have; but, you know, I
13 just don't remember.

14 Q Okay.

15 A You know, I recall generally something going on in
16 court involving Arnie Levine and the Buccaneers; but I don't
17 know if that's the case or not.

18 Q Okay. So despite the -- And I just picked a couple
19 of articles; but despite the press that Judge Holder's
20 gotten over the years, you still think the first time that
21 you ever heard his name is when some papers were slipped
22 under your door?

23 A Dave, let me put it to you this way. I think so.
24 I mean, I know he's a JAG. You know, my primary knowledge
25 of him, if at all, is the fact that he's a JAG. Now I know

1 he's a judge, and we're here, but I've never -- And I'm not
2 trying to be cute here. I've never followed his career, if
3 you will. I've never -- I'm one of these guys that I live
4 in Pinellas. I'm a federal prosecutor. I come in. I do my
5 job. I don't want to maintain ties in Tampa, and I leave at
6 night, and I'm gone. So I -- I'm not trying to be cute, but
7 it's been my experience that that's how I remain impartial
8 and I can do some of the things I've done, and I don't know
9 if that's why I'm not up to speed or not, but I know I'm
10 primarily as we are here. I wish I could be more explicit.
11 I just --

12 Q I appreciate your answer. Okay. Let's start with
13 the appearance of those documents, and let me go ahead --

14 A Okay.

15 Q -- and mark what should be 2.

16 MR. WEINSTEIN: Charlie, need a copy of the PHP?

17 BY MR. WEINSTEIN:

18 Q Mr. Del Fuoco, because we have tired in this case
19 of saying, Purported Holder Paper, on dozens, if not
20 hundreds of locations -- occasions, I should say --

21 A I understand.

22 Q -- I will refer to this as the PHP --

23 A I understand.

24 Q -- from which you will hopefully discern I mean
25 purported Holder paper and save us both some breath.

1 A Okay.

2 Q We'll mark that as our next number, which is 2.
3 Here's one for you and your counsel. I'd like to ask you to
4 take a moment and just generally familiarize yourself with
5 it.

6 (Marked by the court reporter as Respondent's
7 Exhibit Number 2.)

8 MR. PILLANS: Off the record.

9 (A brief discussion was had off the record.)

10 MR. WEINSTEIN: All right. Back on the record, if
11 we may.

12 THE WITNESS: Yes.

13 BY MR. WEINSTEIN:

14 Q I've handed you Respondent's Exhibit Number 2, sir.
15 Can you identify it for us?

16 A Number 2? This appears to be a copy of the PHP,
17 the Purported Holder Paper, that was slipped under the door;
18 but it's missing -- As I recall, there was a fax cover sheet
19 that accompanied this paper that -- I believe it was a fax
20 from an individual in Washington to -- Oh, I'm sorry.
21 Excuse me. I'm mixing apples and oranges. No. There were
22 two papers slipped under my door, and I'll tell you about
23 how that occurred or how I think it occurred, but there were
24 two papers. The other one had the fax cover sheet on it as
25 I recall, but this appears to be the paper -- one of the

1 papers that was slipped under the door.

2 Q Okay.

3 A And, again, I use that term speculatively. I'm not
4 sure how it got in there. That was my guess. At the time
5 it looked like it had been slipped under.

6 MR. WEINSTEIN: Okay. Just so we get the exhibits
7 out of the way, Charlie.

8 (Marked by the court reporter as Respondent's
9 Exhibit Number 3.)

10 MR. LEE: I don't think I ever got a copy of
11 Respondent's 1. Was that just the subpoenas?

12 MR. WEINSTEIN: Subpoenas.

13 MR. LEE: Okay.

14 A Okay. Yeah. I looked at both.

15 BY MR. WEINSTEIN:

16 Q You recognize this, sir?

17 A Yes. This looks like an exact duplicate of the
18 additional paper that accompanied the Purported Holder
19 Paper.

20 Q Okay. All right. Can you tell us how you came to
21 see these papers for the first time?

22 A Yes. I am the team commander for the 174th Legal
23 Support Organization, which is an Army JAG unit; but my team
24 number is 6; and that's in St. Petersburg where -- The 174th
25 is a statewide Army Reserve Judge Advocate organization with

1 teams in various cities. St. Petersburg is one. There's
2 one in the Orlando. There's one in Jacksonville, and then
3 the headquarters is down in Miami.

4 Q Generally, what is the 174th Support Organization?

5 A It's LSO, Legal Support Organization. We're the
6 JAGs who service the Army Reserve units for the 81st
7 Regional Readiness Command out of Birmingham, Alabama; and
8 that's a -- I don't want to get too technical with you here,
9 but that's a -- The Army Reserve is divided up into what are
10 called regional readiness commands, and the 81st Regional
11 Readiness Command is an umbrella headquarters organization
12 that has military authority over a number of Army Reserve
13 units in the southeast from Florida all the way up to the
14 Carolinas, and I think even into West Virginia. So the
15 174th LSO, Legal Support Organization, is the JAG parent
16 unit that administers the Army law function, if you will, in
17 Florida for the units of the 81st RRC that are in Florida;
18 and I am the Team Commander of Team 6 of the 174th LSO,
19 which is headquartered in St. Petersburg.

20 Q Okay. Tell me about the building.

21 A The building is -- It's called the Stover USAR
22 Center, S-t-o-v-e-r; and it is a kind of a one-story --
23 There's a -- Actually, it's two -- a two-story-type
24 structure that is located on Beach Drive Southeast near or
25 adjacent to, if you will, the U.S. Coast Guard facility down

1 there. Matter of fact, there's a Coast Guard PX there; and,
2 you know, it's the St. Pete Coast Guard Station, if you
3 will.

4 Q Okay.

5 A The building, the best way to describe it would be
6 post-Korean War -- And this is me talking -- post-Korean
7 War, pork barrel, government construction. Okay. There's a
8 very, very flimsy, if you will -- Although, it's gotten
9 better since 9-11 -- gate around the facility. The facility
10 has a number of tenant units' vehicles that are parked in
11 the back; and the facility houses offices and drill halls
12 and, you know, classroom areas and a field kitchen, if you
13 will, for the units that drill there on Army Reserve
14 weekends.

15 Q Can you give me some idea of, Mr. Del Fuoco, about
16 how large a building it is?

17 A Yeah. It's -- Jeez. Square footage I'm bad with,
18 but let me put it to you this way. The best way to equate
19 it would be envision a middle school in New Jersey. Okay.
20 Dave, you now what I'm talking about.

21 Q Actually, I know exactly what he's talking about.

22 A You know what I'm talking about?

23 Q Isn't that scary?

24 A Or outside of Philadelphia, you know. It's that
25 kind of a building with, you know, linoleum floors; and, you

1 know, there's an upstairs. There are various classrooms.
2 There's a drill hall in the back that also doubles as a
3 basketball gym and that is furnished with gun-metal gray,
4 banged-up, U.S. Government-issued furniture.

5 Q Okay. How long had you been officed in that
6 particular facility when this event occurred? By this event
7 I mean the papers --

8 A The paper.

9 Q -- showing up in your office.

10 A Jeez. Well, I transferred to this unit when I
11 moved here from D.C.; and so I had been drilling there and
12 at MacDill off and on since say 1995 or thereabouts.

13 Q Okay.

14 A Now, I wasn't the commander at all times. I was --
15 When I first came there, I was a major; and I was -- At one
16 point I served as the de facto XO or Executive Officer, if
17 you will, for this detachment; but I'd say since 1995 or
18 '96, I've -- I've been drilling there.

19 Q Okay.

20 A Now the office where I presently have, you know,
21 my -- where my folks presently congregate, if you will,
22 because that's really what it is -- And the office where we
23 were -- that we were occupying at the time that this
24 occurred was on the second floor of this building, kind of
25 up in the back; and it's kind of hard for me to explain that

1 to you but second floor of the building, adjacent to a
2 female latrine right next door. Okay. A female ladies
3 room -- ladies room, and just to give you an idea of the
4 security or lack thereof -- And I'm not being facetious
5 here -- the -- If we don't have our key to get in on the
6 weekend, we can get into our offices through the female
7 latrine.

8 Q By climbing in a window?

9 A No. No. I mean, if there's no -- Several times
10 I've said, Anybody in here? No. I've gone in. There's a
11 door that connects the female latrine to our offices, and
12 the lock is on the female latrine side. All you got to
13 do -- It's a bolt lock. You pull it. You go in. So given
14 that, I tell my guys no client stuff stays. Everything's
15 got to be gone, and don't mind me. I'm just trying to
16 explain to you.

17 Q Sure. Please.

18 A The door itself -- The door I went in the day I
19 found these papers at the time was locked with a padlock. I
20 know this sounds -- You've got to be thinking this is the --
21 but this is the Reserves. The door was locked with a
22 padlock literally that was one of my soldier's padlocks that
23 he used to lock his duffle bag with; and it kind of had like
24 a hook, you know. So there was some play in the door.
25 Okay. Literally I mean, and I don't know if this is how

1 these got in there, but there was play in the door so that
2 one could easily slip an envelope in and drop it down. In
3 addition -- And I'm trying to set this scenario here for
4 you. The door itself has a -- and still has, if I might
5 add -- a grille at the bottom of it almost like air vents
6 that's kind of beat up and banged up that easily could have
7 been the vehicle via which these were slipped in, or they
8 could have been slipped under the door. That's why I wanted
9 to tell you, you know, it was my speculation they were
10 slipped under the door; but they could have got in there a
11 number of ways as a result of the non-security of that
12 space.

13 Q Okay. Let me -- I appreciate the explanation.
14 It's really helpful. Let me back you up and ask who is --
15 Who is legally authorized to enter the building itself,
16 Mr. Del Fuoco?

17 A Well, there's a building manager/supervisor who has
18 overall key control of that building. I'm not sure -- I
19 can't remember the guy's name. He's in the -- what's called
20 the, I believe, the 641st ASG. It stand for Area Support
21 Group, and this guy is a -- He's like a full-timer there
22 during the week. It's the Department of Army Civilian.

23 Q Right.

24 A And then I think he also is a drilling Army
25 Reservist who drills with that unit, and I forget his name,

1 but I can get it for you.

2 Q Okay.

3 A He has key control, if you will.

4 Q Would it be fair to say, though, that civilians
5 aren't legally authorized to enter that facility?

6 A Let me put it to you this way. It would be fair to
7 say that civilians aren't legally authorized to have keys
8 and come in and out, but civilians are in that building all
9 the time.

10 Q Okay.

11 A We have service members' families coming in and
12 out. We have, you know -- I'm not there during the week,
13 but I've been over there on occasion during the week, and
14 there's been delivery people coming in. In my opinion the
15 place is a sieve.

16 Q Guard at the door?

17 A No.

18 Q Sign-in, sign-out sheet?

19 A No.

20 Q Alarm?

21 A I don't know about alarm. I don't know about
22 alarm. Now let me revise all that to say that the security
23 has become a little bit more tight, you know, post 9-11; but
24 it's slack. I mean, -- A couple of times I've had to ask
25 people who they were and what they were doing there; and,

1 you know, it's just the way it is.

2 Q Okay. The gate that you described earlier to us,
3 was it locked?

4 A Locked when I --

5 Q No. As in when you normally arrive for your
6 Reserve drilling on weekends.

7 A The gate was open because some of the other
8 units -- Some of their early birds were there; so the gate,
9 as I recall, was open; and the gate, by the way, is another
10 one of these padlock deals with a -- with a chain, you know.
11 The gate was open because I don't have a key to the gate, so
12 I couldn't get in, and I was the first one there in my unit,
13 and I think I got there about 6:30 or 7:00 because I do PT.
14 I'm a big PT guy.

15 Q And by that for the record you mean?

16 A I mean physical training; and I get there to use
17 the Coast Guard's weight lifting facility and basically
18 then, you know -- A lot of times I'll -- any of my guys want
19 to work out with me, we go over; and we lift and then we --
20 We run over to the Coast Guard weight facility, which is
21 about two miles. We lift; and then we run back; and we
22 shower there because the male latrine is about fifty feet
23 down the hall from the female latrine; and there are two
24 showers in there; but it's grungy, you know. It's Army.

25 Q Describe for me if I were to walk in the front

1 door --

2 A Yes.

3 Q -- where -- Take me from the front door to the

4 office where you found these papers.

5 A All right.

6 Q Would it be easier for you to draw it out for me?

7 A I can, or else I can -- I can draw it out and

8 explain it as well. I got a pen.

9 Q Okay.

10 A Okay. We have -- Let me see if I can show you

11 here. I'm not much of an artist. This is the gate where

12 you come in. The Coast Guard PX is here. Okay. And there

13 are Coast Guard -- There's a ship that's always parked -- I

14 use the term "Park" because I'm not in the Navy or

15 anything -- that's moored here. The gate is here. I'll

16 just say this is the gate; and I believe this is Beach

17 Drive, I think. I don't remember. I don't know the names

18 so don't quote me on any of this, but the gate's here.

19 You come in the gate, and there is a parking area

20 here. Okay. And you come in the gate, and the building

21 itself is here with the doors kind of like in this corner.

22 These are the doors, and you come in the gate, and you can

23 park in this area, and sometimes I have a parking space

24 there because they have a marking for lieutenant colonel, so

25 I park there sometimes. Otherwise, I'll park outside; but

1 if you get there early, you can get a parking space. If
2 not, you're parking on the street. The doors are here; and
3 our office is up some steps to the left here; and actually,
4 it's over in this corner where I have this X; so this really
5 extends out; and our office is on the second floor in this
6 area; and the female latrine door I'll put an -- I'll
7 designate that FT -- is right there.

8 Q Okay.

9 A And what you can do is go in the female latrine and
10 directly enter our office through the female latrine door
11 right there.

12 Q Okay. How large an office, sir? Approximately.

13 A Approximately, there are actually two rooms; and I
14 would say those two rooms combined are about one-and-a-third
15 to one-and-a-half the size of the room we're in right now.

16 MR. PILLANS: The size of the room we're in right
17 now is about twenty feet --

18 THE WITNESS: Yeah.

19 MR. PILLANS: -- by fifteen feet. Is that right?

20 THE WITNESS: About twenty by fifteen
21 approximately.

22 BY MR. WEINSTEIN:

23 Q Yeah.

24 A So any way, that's the nature of this edifice, if
25 you will.

1 Q Okay.

2 A Now as I understand, a new Reserve center is being
3 built; and it's going to be somewhere, I think, in Pinellas
4 Park. I don't know anything about it. I've not been told
5 anything about it.

6 Q Okay. So to get to this office, Mr. Del Fuoco,
7 you'd have to go in the door, make a turn; right?

8 A Yes.

9 Q Turn to the left, go up the steps --

10 A Yes.

11 Q -- go down the hall --

12 A Right.

13 Q -- okay -- and then to your office?

14 A Correct.

15 Q Okay.

16 A Now the office is marked. People know that's the
17 JAG office in the unit -- in the building.

18 Q Okay.

19 A Because we see a lot of soldiers. We counsel a lot
20 of clients; and people know where the JAG office is; and out
21 on the marquee, which is in this area here where you first
22 come in the door, it says, you know, 174th LSO, Lieutenant
23 Colonel -- They have my name spelled wrong, but they know
24 where the office is. They know the JAG office is upstairs.

25 Q So did the U.S. Attorney's Office in one of these

1 pieces of correspondence.

2 A That's the story. It happens a lot.

3 MR. LEE: That was me.

4 THE WITNESS: Excuse me. I'm going to grab a cup
5 of coffee.

6 MR. WEINSTEIN: Sure.

7 THE WITNESS: And you can keep going,
8 Mr. Weinstein.

9 BY MR. WEINSTEIN:

10 Q Mr. Del Fuoco, approximately how many offices would
11 you estimate are in this building?

12 A Estimate? Jeez. A dozen. A dozen offices, and
13 that's an estimate. Small, small offices. There's an MP
14 unit in there. There are Army medical people in there. I
15 think there was a quartermaster unit in there, but I'd say
16 approximately about a dozen.

17 Q And I was going to ask you to sort of run down --
18 We know we have JAG. We know have an MP unit.

19 A Yes.

20 Q There's an Army medical unit. The fourth you
21 mentioned was?

22 A I'm sorry?

23 Q The fourth one you mentioned? I missed it.

24 A Quartermaster.

25 Q Quartermaster.

1 A Yeah. There's a -- There used to be -- I don't
2 know if it's still there, but there used to be a
3 quartermaster boat company because this is right on Tampa
4 Bay. It's right on the water.

5 Q Right.

6 A And I'm not sure about the other units, but there
7 are about -- There's a lot of soldiers that drill there. I
8 mean, on a cooking weekend, you've got -- That parking lot's
9 overflowed. I mean, sometimes you've got to park two blocks
10 away; and there are always units there doing Army PT tests,
11 physical training tests, doing things outside. I mean, it's
12 a humma-humma place on a good weekend.

13 Q Okay. So multiple units and multiple soldiers
14 within each unit?

15 A Yeah.

16 Q More than 100 on a busy weekend?

17 A Oh, yeah. Yeah. I'd say -- I'd say anywhere on a
18 busy weekend between, jeez, gosh -- A guesstimate would be
19 anywhere between, you know, 175 and 350 soldiers at a
20 minimum.

21 Q And is that in the building or inside and outside?

22 A Inside and out. I mean, there's guys out working
23 on vehicles; and there's a lot of formations because they're
24 trying, especially -- JAG units are a little different
25 because we're basically doing the same things we're doing

1 all month as civilian lawyers, except for, you know, I have
2 my people -- I'm very big on physical training, but the
3 units that do things in the Army that they don't do -- Like,
4 for example, just by virtue in an example, I don't need to
5 run a class with my guys on how to cross-examine a witness
6 because we're doing it all month. See. It's just like Army
7 doctors. They can -- That's why it's so cheap for the Army
8 to have us. We're almost on retainer; but units that are,
9 say, combat support units, like quartermaster, or service
10 support units, like -- like MP, they do more Army-type
11 training; so that's why there's a state of movement all the
12 time, you know.

13 Q Okay. How often are you there? Let me rephrase
14 it.

15 A Yeah.

16 Q During the time frame immediately preceding these
17 papers surfacing in your office, Mr. Del Fuoco, how often
18 were you there? Once a month? Once a week?

19 A Pretty much once a month. I mean, I'm not down
20 there -- I'm not one of these guys that's, you know, wedded
21 to the Reserves. I mean, I go drill. I will do certain
22 unit administrative things at home, you know, writing my
23 people's evaluation reports, that type of thing; but I'm
24 there once a month.

25 Q And when you're not there --

1 A Yes.

2 Q -- you know, the other twenty-eight days a month or
3 whatever it happens to be, sir, who, if anyone, occupies
4 that office?

5 A During the week there is a cadre of what we call
6 AGR people, and that stands for Active Guard and Reserve.
7 Now these are active-duty people who are in the Army
8 Reserve. Now I know it sounds weird.

9 Q Yeah. I'm lost. Could you explain it to me?

10 A Well, I'll explain it to you. The Army's divided
11 up into three components. There's RA, Regular Army.
12 There's -- I'm looking at Ralph because he's an ex Air Force
13 guy.

14 MR. LEE: I just happen to know what he's talking
15 about.

16 A There's RA, Regular Army. There's USAR, United
17 States Army Reserve. Regular Army and USAR are underneath
18 the President. They're federal functions, and then there's
19 the National Guard of the United States. Unless they're
20 federalized, they belong to governors. Okay. And we don't
21 have any National Guard people in here, but because you need
22 people to run the center all month and basically to do the
23 day-to-day work for the part-timers --

24 BY MR. WEINSTEIN:

25 Q Right.

1 A -- there is a cadre of active-duty people there who
2 are part of the USAR component, so they're getting paid
3 full-time as Army people, but their component is USAR, and
4 they are there all week.

5 Q Okay.

6 A So these people are in that center. They have key
7 control, you know. They're there working everyday. For
8 example, it's Friday right now at ten after one. I could
9 call down there, and somebody's going to answer the phone.
10 They're working.

11 Q Right.

12 A They're doing --

13 Q I'm sorry.

14 A No. They're doing their work day. They're there.

15 Q Approximately, how many?

16 A I would guess -- Again, it's only a guess because I
17 don't know.

18 Q Give me an estimate.

19 A I would estimate anywhere between twenty and fifty
20 people who are there full-time everyday.

21 Q Anybody if your office, the office where these
22 papers were found?

23 A No. No.

24 Q So is that office then, Mr. Del Fuoco, empty other
25 than the two days a week -- two days a month -- I'm sorry --

1 in which your unit drills there?

2 A Yes. Now let me just -- And I just thought of this
3 to give you an idea of what we're talking about in terms of
4 the security or lack thereof here. Within the last several
5 months even, I have discovered -- And some of my other guys
6 said, Well, hey, whose stuff is this -- about four or five
7 duffle bags from soldiers rotating back from Iraq that are
8 stored in our space. Like, we come in; and we see, you
9 know, guys' stuff, you know, where it's obviously been
10 shipped, you know, footlockers and stuff; and what happens
11 is very honestly it appears to me that, you know, when the
12 full-timers don't have any place to put anything, they use
13 our office as a dumping ground. I don't know if that's
14 relevant to your inquiry or not, but these are the facts.

15 So the bottom line is, not only does someone
16 have -- Oh, and by the way, since 9-11 we have a real lock
17 now on the door. Okay. There's a real lock with a real
18 key. Okay. But you still can come in through the female
19 latrine, and somebody's got a key even when I'm not there.
20 For example, I have a key on me -- Well, it's back in my
21 office, you know, they have access to it.

22 Q Okay.

23 A So I mean, I'm trying be as explicit so you know --

24 Q Okay.

25 A -- because I wanted to tell you guys this because I

1 wanted you to know what the deal is here.

2 Q Okay. And when you say, They have a key, you meant
3 the full-time Army --

4 A Oh, yeah.

5 Q -- folks that you talked about?

6 A Yeah.

7 Q Okay. And you talked about or described to me that
8 there's a sign on the building or by the door that says --
9 that identifies that there's a JAG --

10 A Yeah. It says, 174th LSO. It's on there.

11 Q Okay. And your name as well?

12 A My name's not on the door. My name's -- was down
13 on the marque. I think they've changed it. They're messing
14 around.

15 Q What about at the time?

16 A At the time it was on the marque.

17 Q Okay.

18 A And, you know, people, you know -- I'm kind of -- I
19 don't know how to put this. People know who I am. They
20 know who I am there.

21 Q People go to your office to get legal advice?

22 A Correct.

23 Q Okay. So anyone in that Reserve unit who would
24 need legal advice would know that you run that unit?

25 A Oh, they know, yeah. As matter of fact, they also

1 know that I'm -- They know that I'm kind of gung-ho-kind-of
2 soldier type and I'm running and lifting. I mean, let me
3 put it to you this way. Rank-and-file soldiers know who I
4 am. I mean, they do. I mean, I'm not a -- I'm an Army
5 lawyer, but I'm an Army officer. I mean, I'm out there; and
6 they know me.

7 Q And you've been there -- You were there -- When
8 these papers first showed up, you were there for seven
9 years?

10 A Yeah. About six, seven years, yeah, about that.

11 Q All right.

12 A I wasn't the commander but I --

13 Q But you're there?

14 A Yeah.

15 Q So when we go through the door, we make a left. We
16 go up the stairs. We go down the hall. We come to your
17 office?

18 A Right.

19 Q Name on the door?

20 A 174th LSO is on the door.

21 Q Okay. Not your name?

22 A No.

23 Q Okay. Is there a room number?

24 A You know what? I don't know. I've never looked at
25 it that way, you know. Our approach, I believe -- I know

1 what mine is -- It's just where we -- It's what they
2 assigned us. It's where we hang. If we have clients that
3 we need to counsel, I clear all my guys out. Whatever JAG
4 is handling that client goes in one of the rooms. The door
5 is shut, and there's confidentiality.

6 Q Okay.

7 A So I'm not sure what the room number is. I'm
8 certain there is one, but I don't know what it is.

9 Q Let me focus you on the weekend in which these
10 papers appear, if I can, Mr. Del Fuoco; and when you walked
11 in that morning, you had not been there for a month. Am I
12 correct?

13 A Yeah. That's about right. I believe so.

14 Q Okay. Is any -- I'm sorry. I didn't mean to
15 interrupt.

16 A That's all right.

17 Q And with respect to the people to -- that report to
18 you, sir, none of them had been there for a month?

19 A You know, David, I can only assume that. I don't
20 know that for sure. I assume none of them had been there
21 for a month.

22 Q And I think I forgot to ask you, Mr. Del Fuoco.
23 How many people approximately report to you in this unit?

24 A Jeez. I think Mr. Pillans -- Can we go off the
25 record just for a second?

1 Q Sure.

2 (A brief discussion was had off the record.)

3 MR. WEINSTEIN: The witness is referring to a
4 document of -- We can get a copy made, and we'll attach
5 it.

6 A In any event, what I did, I attempted to pinpoint
7 when this occurred; so I went back into some unit records;
8 and I determined to the best I can tell you that these
9 papers appeared either on --

10 MR. LEE: Excuse me. Let me just show counsel.

11 I've got a copy of what he's looking at.

12 MR. WEINSTEIN: I appreciate it.

13 MR. LEE: It's the only copy I have, though.

14 MR. WEINSTEIN: We'll get a copy.

15 MR. LEE: You can get me another one back at the
16 office?

17 THE WITNESS: Oh, yeah.

18 MR. LEE: Okay. Use that up. Use that up.

19 Let me show Charlie.

20 MR. PILLANS: I think I got it. What's the title
21 of it?

22 MR. WEINSTEIN: It doesn't look -- That looks
23 abbreviated actually. That looks like it's about three-
24 We'll mark it.

25 THE WITNESS: It's a three-page deal.

1 MR. LEE: This is all the stuff you sent Charles.

2 This is more than just this document.

3 THE WITNESS: Okay. I'm sorry.

4 BY MR. WEINSTEIN:

5 Q We'll ask you about that in a moment.

6 A Okay. Yeah. This is --

7 MR. LEE: This is Charles'. I don't want to be
8 responsible for that part.

9 A This is what's called an IDT Attendance Roster.

10 BY MR. WEINSTEIN:

11 Q IDT?

12 A IDT. It stands for Individual Duty Training. All
13 right?

14 Q Okay.

15 A I believe that's -- No. I'm sorry. Excuse me.

16 Inactive Duty Training, IDT; and it is dated for January of
17 2002; and you'll see that up at the top it says, Unit Name,

18 174th JA Team, Legal Team 6. That's my team, JA, Judge

19 Advocate; and this is the sign-in roster that my people

20 utilize to demonstrate that they showed up and they were

21 accountable and they were where they were supposed to be.

22 What typically happens is at the end of the drill weekend I

23 will take this roster, certify that these people were there

24 and send it down to the headquarters for accounting

25 purposes. Okay. Now, what I've done is this is for January

1 12th and 13th of 2002; and what I've done is I've blacked
2 out everybody's name and identifiers, their Social Security
3 Numbers and their signatures; and the reason I did this is
4 because I was attempting to determine -- because I know that
5 these were dropped there in 2002 -- I was attempting to
6 determine to the best I could to pinpoint the days, and
7 that's what this is. Okay. So if you take a look at all
8 the places -- And if I may, Dave -- I'm sorry.

9 Q Sure.

10 A To answer your original question -- I'm sorry.

11 Q How many. Right.

12 A One, two, three, four, five, six, seven, eight,
13 nine, ten, eleven, twelve, thirteen -- I had fourteen people
14 show up on that weekend.

15 Q Okay.

16 A Now that varies sometimes because I've lost some
17 people to go into Iraq. I've had some people come back
18 since then. I got a lieutenant over there right now; but at
19 the time I had fourteen people, give or take.

20 Q Were you the first one in that particular unit --

21 A I was.

22 Q Are you always the first one there?

23 A No. A lot of times I am. It depends. I went in
24 that morning to workout.

25 Q Okay.

1 A A lot of times I go in early to use the Coast Guard
2 gym and get my run in. I'm not always the first one in, no.

3 Q Okay. Mr. Del Fuoco, do you believe that January
4 12th or 13th, 2002, was, in fact, the date you found these
5 papers in your office?

6 A To the best I can determine, yes. It was one of
7 those days.

8 Q Okay. And tell me why you believe so, sir.

9 A Well, I know I found them in January of 2002.

10 Q Okay. And how do you -- Forgive me; but how do you
11 know that, as opposed to February, as opposed to December?

12 A Because of certain actions that I took subsequent
13 to that day that, you know, make me fairly confident that
14 that's when these papers were dropped; and I'm not trying
15 to, you know, skirt it. I'm just trying to stay within the
16 scope.

17 Q Okay.

18 A But I'm fairly certain it was either one of those
19 two days. Okay. We have one. That's right, exactly.

20 Q Are you referring to a document that's within the
21 scope?

22 A Yeah, I believe it is.

23 THE WITNESS: Is that within the --

24 MR. LEE: That's a document he sent to you.

25 MR. PILLANS: What about it?

1 MR. LEE: He wants to refer to it. Since he sent
2 it to you, you get to say yay or nay on that one.

3 MR. PILLANS: The other document he sent, is it
4 like this?

5 MR. LEE: Right.

6 THE WITNESS: Right.

7 MR. PILLANS: I don't care whether he refers to it
8 or not if it helps his testimony.

9 BY MR. WEINSTEIN:

10 Q In any event, I can do this the long way around and
11 say, What documents did you send to Mr. Pillans?

12 A Yeah. Well, actually, I sent these to him
13 yesterday.

14 MR. WEINSTEIN: I'm just trying to move as quickly
15 as I can, Counselor.

16 MR. LEE: I am too.

17 A Any way, what I'm looking at now is a copy of the
18 face page of my government appointment book for 2002.

19 BY MR. WEINSTEIN:

20 Q Okay.

21 A And as a matter of fact, my name is printed --
22 That's my printing up at the top.

23 Q Okay.

24 A And specifically, I am looking at the dates
25 Tuesday, January 22nd and Wednesday, January 23rd; and for

1 Tuesday, January 22nd at ten a.m., I have the words printed,
2 OSI agents; and then I crossed that out, scribbled it out;
3 and then I have for Wednesday, January 23rd the words, OSI
4 agents at ten a.m.; and that's not crossed out; and I'll
5 just hand you that right now.

6 MR. WEINSTEIN: Okay. And why don't we take a
7 second, if we may; and this would be 3; and this will be
8 4.

9 MR. PILLANS: 3 is the attendance roster?

10 MR. WEINSTEIN: Yes, sir. No, I'm sorry. 3 was
11 the -- I'm reading upside down. I'm sorry, Charlie. 2
12 was the PHP.

13 MR. PILLANS: 3 was the Hoard papers.

14 MR. WEINSTEIN: 3 was the Hoard papers. They're 4
15 and 5. Pardon me. Yes.

16 (A brief discussion was had off the record.)

17 (Marked by the court reporter as Respondent's
18 Exhibit Numbers 4 and 5.)

19 MR. WEINSTEIN: The document to which the witness
20 was just referring is entitled, United States Government
21 Appointment Book, and shows as the second page the week
22 beginning January 21, 2002.

23 BY MR. WEINSTEIN:

24 Q What does OSI stand for, sir?

25 A Air Force Office of Special Investigations.

1 Q Okay.

2 A The Army equivalent would be the U.S. Army Criminal
3 Investigation Division or CID.

4 Q CID. All right. Let me -- Let's start with that
5 morning --

6 A Yes.

7 Q -- and move chronologically. You arrived at your
8 office at approximately what?

9 A Well, I know it was just getting light. I do know
10 that. I know I had a -- I recall having a 7-Eleven coffee
11 cup with me; and I was in my PT gear; so I think it was
12 about 6:30, quarter to seven.

13 Q Okay. Notice anything unusual before you got to
14 the office?

15 A No. No. I pulled in, found a parking spot. I had
16 my uniform, my BDUs -- It's a uniform we wear -- slung over
17 my shoulder. I had my gym bag with me. I had a cup of
18 coffee, and I had my briefcase. I was doing one of these
19 deals and going up the steps. I didn't notice anything
20 unusual.

21 Q Door locked or unlocked when you got to it?

22 A The door -- The door to the center was unlocked.

23 Q Front door or gate we're talking about?

24 A Front door. The gate was open. The gate was open,
25 and the door to the center was unlocked as I recall, and I

1 went up the steps. I had all my junk. I had a briefcase
2 because I had some JAG stuff in there. I had my workout
3 stuff. I already had my PT uniform on, Army, you know. I
4 had my BDUs, my boots and everything. I had them in the gym
5 bag, and I was humping it up the steps.

6 Q Okay.

7 A I got to the office, and there's a padlock. At the
8 time we had the padlock. I put all my junk down. I opened
9 up the door. The padlock, you know, it's kind of one of
10 these deals. I opened it up, took the padlock off, picked
11 up my junk and kind of went through the door; and I kicked
12 an envelope that was -- that contained these items.

13 Q Okay.

14 A Actually, I remember kicking it with my running
15 shoes. It was kind of laying to -- Let's see --

16 Q Door opens --

17 A -- just to the -- just to the -- The door opens in;
18 and the envelope was kind of just to the left of the door,
19 right inside the door; and I kicked it and I, you know -- I
20 was thinking, I don't know what that is. I turned the light
21 on. I took my stuff, put it down. Then I came back, and I
22 picked it up.

23 Q Okay. Describe the envelope for me.

24 A The envelope was a plain, manila envelope, you
25 know, standard-, you know, type, manila envelope with no

1 markings.

2 Q Eight-and-a-half by eleven?

3 A It was either eight-and-a-half by eleven; or it
4 might have been a little bit bigger; but that was that type
5 of a, you know, plain, manila envelope; and it was not -- As
6 I recall, it was folded in; but it wasn't, you know -- It
7 wasn't sealed.

8 Q Okay.

9 A As I recall, I don't recall it being sealed.

10 Q In other words, the flap you're talking about?

11 A Yeah, the flap. I think it was folded in, but I
12 don't remember exactly.

13 Q You don't have a recollection of having to tear it
14 open?

15 A No. I don't recall. I don't think I had to tear
16 it open.

17 Q One of the ones that has a hole in it and the
18 prongs that come out that you bend?

19 A No. No. It was -- It was just an envelope, you
20 know, with the flap over it, as I recall; and I picked it
21 up. Matter of fact, I thought, you know, I don't know what
22 this is. It could have been anything because, you know,
23 like I said, anybody could have left anything there because
24 of the security or lack thereof in this office; so I picked
25 it up.

1 Q Okay. And then what happened next?

2 A I picked it up; and I felt inside, pulled the stuff
3 out; and the Exhibits 2 and 3 were in there; and there was a
4 note.

5 Q Okay.

6 A There was a note in there. The note was on a piece
7 of plain, white paper, like a typing sheet; and the note was
8 typed.

9 Q Okay. White stationery, eight-and-a-half by
10 eleven?

11 A Yeah, eight-and-a-half by eleven.

12 Q Plain, white piece of typing paper?

13 A Plain, white piece of typing paper; and there was
14 no signature. There was nothing like that on there, and it
15 contained a note. It -- Oh, jeez. It said something to the
16 effect of, Colonel Del Fuoco -- I don't know how they
17 spelled my name. I know it was wrong -- something should be
18 done about this. You should do something about this; or,
19 You probably would be interested in this; and then there was
20 a -- I don't remember how it was, you know, left in terms of
21 the signature; but so I put the stuff down; and I looked
22 through the exhibits; and I thought, you know -- I said,
23 What the hell? And at the time -- And I thought, you know,
24 This is -- I thought it might have been like a joke, almost
25 a joke on me. I mean, this is really weird, you know. I

1 thought one of my people was playing around with me or
2 something. You know, I didn't know.

3 So I started to look at this stuff; and that's when
4 I noticed some similarities between what's marked as your
5 Exhibit 3 and Exhibit 2; and so then what I did was I
6 thought, Well, you know, I got things to do. I'm not going
7 to deal with this now; and I put all of the items back in
8 this envelope. I put them in my briefcase, locked my
9 briefcase, left my briefcase underneath the desk area where
10 I -- that I use, and I went to the gym. That's what I did.
11 I went to the Coast Guard weight room.

12 Q Okay. How long would you estimate, Mr. Del Fuoco,
13 that you looked at the two papers this very first time you
14 looked at them?

15 A No more than five minutes because I wanted to get
16 over to the gym. I wanted to get going; and I thought, you
17 know. So what I did was I packaged them back up, put them
18 in the briefcase, locked it up because I thought, you
19 know -- I didn't know what was going on, and I went to the
20 gym.

21 Q Okay. Understood. What about the two, you know --
22 I think you said similar. What about -- You noticed
23 similarities, I think those were your words. What
24 similarities did you notice?

25 A I don't remember exactly what they were at the

1 time; but I noticed that there were certain things that
2 appeared to be similar in terms of content; and I don't
3 recall at the time what they were; but I remember generally
4 thinking, you know; and then looking at them in conjunction
5 with this note, I thought, I don't know what this is; so,
6 you know, I wanted to keep it confidential, if you will, I
7 guess, until I could, you know, think it through; and I
8 really wasn't sure what it was; and I wanted to get over to
9 the gym; so I put all the stuff in a briefcase and left.

10 Q Okay. Now you are -- Are you sure, Mr. Del Fuoco,
11 that the note was addressed to you in your military
12 capacity? In other words, it said, Colonel Del Fuoco?

13 A Jeez. I'm not sure. It could have said, Mr. See,
14 here's the thing. I believe -- I remember thinking at the
15 time that, I wonder why I have these; and then at the time I
16 was doing Plant City; and I don't know; and I'm sure, you
17 know --

18 Q Generally.

19 A -- about Plant City, and at the time Plant City was
20 getting hot. There was a lot of contentious litigation
21 surrounding the charges involving Armand Cotnoir, who's the
22 one -- who's the guy who had a convicted trial; and I
23 remember thinking, you know, obviously people, they got this
24 to me because -- You know, I was speculating so.

25 Q But in your own mind --

1 A It could -- I don't remember. I think it -- I
2 think it was Colonel, but I don't remember sitting here now.

3 Q Right. You think it's Colonel, but you're not
4 positive?

5 A Right. It could have been Mr. I don't know.

6 Q But it was one of the two. It wasn't Dear Jeff?
7 It wasn't Jeff?

8 A No. No. No. No. No. There was no informality
9 there.

10 Q Okay.

11 A It was either Mr. or Colonel.

12 Q Okay. And in your own mind, the Plant City case
13 was proceeding; and what you had, you know, speculated at
14 the time was that somebody had given this to you because
15 they knew your name in relation to that case?

16 A That was my speculation. I think I even said that
17 to Colonel Leta. My -- You know, because guys in the
18 unit -- not in the unit but in the Reserve center, Hey, who
19 you locking up this time? You know, just joking around.
20 Kind of playing, you know, soldier; so people knew me, you
21 know; and that was my speculation.

22 Q Was there anybody in the unit at the time, Mr. Del
23 Fuoco, that's still there?

24 A Oh, yeah. Yeah.

25 Q Okay. Did you have a conversation with anybody in

1 your unit about -- about these papers or the envelope that
2 day?

3 A No, I did not.

4 Q Any time since then?

5 A I have, yeah, since then because this has all
6 become a public thing, you know; but I have -- Yes, I have
7 talked to people about it.

8 Q Okay. Is there anyone in your unit who has any
9 firsthand knowledge regarding these events, other than you?

10 A Not that I know of, no.

11 Q Let's go back to the note for a second, if we may,
12 sir.

13 A Yeah.

14 Q Run off a computer or typed?

15 A Jeez. As I recall, it appeared to be typed; but I
16 can't say for sure. It appeared typed, though. It appeared
17 typed.

18 Q Did it ever occur to you that the -- that the
19 envelope may have been delivered by anybody in your unit?

20 A At the time, no. Since this has been referred to
21 the JQC and all this has occurred, I have asked myself that
22 question. I have no evidence that that's the case, but I
23 have asked myself that question.

24 Q Okay. Have you asked the members of your unit --
25 or any member of your unit, I should say, Mr. Del Fuoco,

1 whether or not they're responsible for depositing that
2 envelope in the office?

3 A No, I have not.

4 Q Why, may I ask?

5 A Because -- And I have been tempted to. I have not
6 because I did not want any of my guys to think that I felt
7 untoward toward them as a leader, and I have no evidence to
8 suggest that any of them did it or would do it. I hold my
9 people in pretty high regard, and not to be corny about it,
10 but I have wanted to perhaps ask, but I haven't because of
11 those reasons.

12 Q Okay. Would it be fair to say that -- that
13 suggesting one of your members, one of your -- What would
14 you call them? What would be the proper -- Subordinates?

15 A Yeah.

16 Q Is that fair enough?

17 A Yeah, that's fair enough.

18 Q Okay. Would it be fair to say that to suggest one
19 of your subordinates would have done something like this
20 anonymously would have been ill perceived by them?

21 MR. PILLANS: Would have been what?

22 MR. WEINSTEIN: Ill perceived, would have been not
23 well taken by your subordinates.

24 MR. PILLANS: I object to that. That calls for
25 speculation.

1 BY MR. WEINSTEIN:

2 Q You mean that was your concern in not asking?

3 A Well, no. No. My concerns were several fold.

4 That may have been one of them, but I also didn't want to go
5 off half cocked and try -- and then be perceived as accusing
6 somebody of something. As a matter of fact, I personally
7 took great pains to protect Colonel Holder from that; but
8 that's something for another question, I guess, down the
9 road; but in any event, no, I didn't -- I just didn't think
10 it would be -- I had no evidence of it, and I just didn't do
11 it --

12 Q Okay.

13 A -- for the reasons stated.

14 Q Understood. No markings on the note whatsoever?

15 In other words, no --

16 A No. There was no signature.

17 Q No address?

18 A No. Nothing. It was kind of like, as I recall, up
19 at the top third of the paper, this, whatever, the message.

20 Q Oh, on the note you mean?

21 A Yeah, on the note.

22 Q Let me start from the envelope, and just bear with
23 me.

24 A That's fine.

25 Q No address label?

1 A Nothing.

2 Q No name?

3 A No name.

4 Q No external marks?

5 A Nothing.

6 Q Plain envelope?

7 A Correct.

8 Q All right. Moving to the note --

9 A Right.

10 Q -- eight-and-a-half by eleven sheet of paper?

11 A Yes, sir.

12 Q Appeared to have been typewritten rather than

13 computer from your experience?

14 A Yeah. It appeared that way, yeah.

15 Q Any typos? Any -- Anything remarkable at all?

16 A Jeez. I don't remember if there were any typos. I

17 recall -- I seem to recall, you know, as usual, my name was

18 spelled wrong; but I don't recall any typos.

19 Q Okay.

20 A There could have been. I don't know.

21 Q And the basis -- And I realize in your long career

22 as a prosecutor, you've looked at lots and lots of documents.

23 A Yes.

24 Q Explain to me just generally what the basis was

25 that you think it was typewritten rather than computer. Was

1 it -- Was it lack of uniformity?

2 A Jeez. I don't know how to -- I mean, the best way
3 I can answer is it just didn't look like it was done on a
4 computer. It looked like it was typed.

5 Q Okay.

6 A It looked like your high school term paper when you
7 used to do things on a typewriter. That's the best way I
8 can -- I don't know, Dave. I don't know if it was typed or
9 done on the computer. I don't know.

10 Q Okay. But based upon your experiences, you believe
11 it's more likely than not it was typed?

12 A Yes.

13 Q Okay. Is there a typewriter in that office,
14 Mr. Del Fuoco?

15 A We have some computers that we've gotten since
16 then.

17 Q Okay. Bad question. Let me take you back.

18 A Okay.

19 Q At the time that you found the note --

20 A Yes.

21 Q -- okay -- and envelope and papers, was there a
22 typewriter in that office?

23 A I don't believe so, no.

24 Q Was there a computer in the office?

25 A No. As a matter of fact, as I recall, one of my

1 NCOs just was able in the last year or so to get us some
2 surplus government computers and a printer.

3 Q Okay.

4 A Because guys -- My people were using their laptops
5 to do things.

6 Q Okay. Was the envelope in which you found these
7 documents a type of envelope that was used at the Reserve
8 center?

9 A It was a type that was used; but the thing is most
10 of the envelopes I've seen say, Department of the Army, you
11 know. They have the franking privilege on them. They talk
12 about penalty for private use. This was a plain envelope.

13 Q What about plain, white paper like that? Something
14 available in that --

15 A Oh, yeah. I'm certain of it. I'm certain of it.
16 Yeah. It's -- It's standard paper.

17 Q Anything remarkable about the paper? In other
18 words, it was nice, fine paper? It was lousy, thin stuff?
19 Anything in between?

20 A Nothing remarkable. I mean, it was just -- It
21 wasn't high-rate content paper; but, you know, it didn't
22 have any indicia of, you know.

23 Q Wasn't the fancy stuff Charlie uses in his office?

24 A No. It wasn't that, no.

25 Q All right. Okay. So --

1 A Really, it was just standard ash-and-trash, white
2 paper as I recall.

3 Q So you go work out?

4 A Yes.

5 Q And you come back to the office?

6 A Yeah.

7 Q Okay. The two papers, the note and the envelope
8 are locked in your briefcase?

9 A Locked in my briefcase.

10 Q What do you do next?

11 MR. PILLANS: Regarding the paper?

12 MR. WEINSTEIN: Yes, sir.

13 A Nothing. They're in there.

14 BY MR. WEINSTEIN:

15 Q Okay.

16 A They're in the briefcase. We drill. We do what
17 we're doing. My guys are there. I don't remember exactly
18 everything, but we go through a duty day.

19 Q Okay. Did you mention the envelope, note, the
20 papers -- Let me call them the documents. Okay. Did you
21 mention the documents to anybody else that day?

22 A No.

23 Q Okay. Take them home with you?

24 A Yes.

25 Q Okay. What is the next thing chronologically that

1 occurred with respect to the note, the envelope or the
2 papers?

3 A Let me think back. See, here's the thing. I'm not
4 sure -- I thought this was a Saturday, but I'm not sure if
5 it was Saturday or Sunday now. I don't recall. It was one
6 of those days. Very likely it could have been Saturday, but
7 I don't know.

8 Q So when you pull Reserve duty --

9 A Saturday and Sunday.

10 Q Exactly -- from the time you get there, which you
11 told us is crack of dawn kind of thing --

12 A Yeah.

13 Q -- when do you usually leave?

14 A 16:30 -- 4:30 in the afternoon, five o'clock, that
15 type of thing.

16 Q All right. Okay. So --

17 A I'm sorry. Your question was.

18 Q What's the next thing that occurred chronologically
19 that has any relationship to these papers?

20 A The next thing that happens with regard to those
21 papers -- I don't think I did anything with them that
22 weekend.

23 Q Okay.

24 A I think that, you know -- I think, as I recall to
25 the best I can recall, they stayed in the briefcase; and I

1 believe the next time I looked at them was Monday morning at
2 the U.S. Attorney's Office.

3 Q Okay. Let me -- Let me take you back in time for a
4 second. Who -- Give me an idea of who knew your Reserve
5 schedule. Who knew that Colonel Del Fuoco was going to be
6 in his office that particular weekend?

7 A Well, pretty much we all drill at the same time;
8 and the reason for that is --

9 Q And by -- I'm sorry, Mr. Del Fuoco; but by, We all,
10 you mean all the units?

11 A All the units. The reason for that is because we
12 want to be available when the clients are available.

13 Q Makes sense.

14 A Okay?

15 Q Sure.

16 A If for example, you know, we're drilling on a
17 weekend when nobody's there, people aren't going to come
18 down, Oh, yeah, I got an appointment with JAG. They're not
19 going to show up, and a lot of what we do are what we call
20 hot urinalysis boards where people take a urinalysis.
21 They're out partying. They come up hot for cocaine; so we
22 counsel, you know, people who are facing administrative
23 chapter actions; and so we got to have the soldiers there;
24 so generally speaking, we drill when they drill so we're
25 there.

1 Q Okay. Office hours posted?

2 A No, they're not posted. Everybody knows pretty
3 much that the duty day starts around 7:30 and ends at 16:30,
4 so they know we're there.

5 Q They know you're there, and they know which weekend
6 you're going to be there?

7 A Yes.

8 Q And virtually, anybody in that unit would have had
9 access to that information?

10 A Absolutely. Oh, yeah. Yeah.

11 Q And similarly, if they knew which -- which two days
12 a month you were there, they knew which twenty-eight days
13 approximately you weren't there?

14 A I would think so, yeah. Now, you know, let me put
15 it to you this way. I -- Let's assume, like, right now it's
16 a quarter to two on Friday the 27th of August and I
17 remember, you know, I really got to -- I got to get
18 somebody's officer evaluation report done and I got some
19 information on that. I could go over there right now, and
20 the gate would be open. The active-duty people would be
21 there; and I'd be able to go up to the office to get what I
22 need; but generally speaking, I'm a once-a-month guy because
23 I'm very busy; and at the time I was involved in this, I was
24 doing public corruption investigations on multiple fronts.

25 Q Okay. Outside the -- your unit and the soldiers

1 who train in that facility, who else is apprised of the
2 schedule? Is there headquarters?

3 A The headquarters in Miami knows when we're
4 drilling.

5 Q Okay. And does your legal unit only serve soldiers
6 who drill at that particular facility?

7 A No. No.

8 Q So if I'm a soldier, and I need some counseling by
9 a JAG officer --

10 A Yes.

11 Q -- how do I know where to find you and when you're
12 going to be there?

13 A Well, if you're in -- If you're there in St. Pete,
14 you know, you can come and ask us, Hey, you guys going to
15 be -- when you going to be around; and generally, you know
16 we're drilling when you're drilling. Let's assume I have a
17 guy in Orlando who needs a will done and we don't have a
18 servicing JAG unit in Orlando. That individual can call my
19 headquarters in Miami and say, Hey, look I'm Private Snuffy.
20 I need a will; and what will happen a lot of times is the
21 people in my headquarters in Miami will call me as the OIC,
22 the Officer In Charge, and say, Look, sir, we need --
23 Private Snuffy needs a will. Can you do it, or can you get
24 one of your guys to do it? And then typically, I'll have
25 one of my people call him and set up an appointment to come

1 in on the drill day; or if it's something that's really
2 important, you know, I'll have -- I let my people meet with
3 people -- For example, if you were in my unit and somebody
4 needed some help, he could come to your office tonight. You
5 record your time, and then I would give you appropriate
6 credit for that.

7 Q Okay.

8 A But that's generally the way it works.

9 Q What about non-military folks? Any way of somebody
10 outside the military knowing?

11 A Well, we do some family stuff, you know. We
12 counsel some dependents, but a lot of dependents get
13 counseling from active-duty JAGs at MacDill when people are
14 called to active duty.

15 Q Okay. Now we're back to Monday morning, I think,
16 this would have been.

17 A I think it would have been the 14th or 15th. I'm
18 not sure.

19 Q Monday the 14th of January, 2002, according to your
20 schedule, Exhibit Number 5. Calendar, I should say. All
21 right. Now what happens?

22 A All right. Let me see. I -- And I'm trying to
23 reconstruct the best I can remember. I get to the office.
24 I have my briefcase. The first thing I usually do is I will
25 take what's been marked as Exhibit 4, and I will fax this

1 down to Miami. This is my attendance roster. I will send
2 this down to my people down there for accounting --
3 accountability purposes, and at some point I looked at what
4 you've marked as Exhibits 2 and 3 along with the note and
5 the envelope they all contained -- came in.

6 Q Okay. It was a -- purported to be military papers?

7 A Yeah. Yeah. Obviously, yeah.

8 Q How come you took them to the U.S. Attorney's
9 Office as opposed to some military office?

10 A May I?

11 Q Certainly.

12 (A brief pause was had.)

13 A All right. Well, first of all, I took my briefcase
14 to my office.

15 BY MR. WEINSTEIN:

16 Q Okay.

17 A And they were in the briefcase. I just never took
18 them out.

19 Q Right.

20 A That was the first thing. When I got to the
21 office, I went into my briefcase, saw them and said, Oh,
22 yeah, you know. These are in there. I went through them,
23 and I noticed -- I went through them in more detail than I
24 did --

25 Q Right.

1 A -- when I found them, and then I noticed
2 similarities. In other words, very honestly, based on the
3 note, based on the fruit of nature via which they were
4 placed under the door and then looking at them in a little
5 more detail as I sat at my desk, I believe I thought, This
6 appears to be plagiarism. It appeared to be.

7 Q Okay.

8 A I didn't know, but that was just my quicky call at
9 the time. I didn't know; but I assumed that's what the
10 message was that somebody was trying to get to me; and
11 honestly, I noticed that, you know, we had a judge. We had
12 a Department of the Defense U.S. Government attorney up in
13 Washington faxing them to a judge, and that's what I did.

14 Q Okay. Mr. Del Fuoco, did you -- Did you know who
15 David Hoard was --

16 A No, sir.

17 Q -- at the time? Do you know David Hoard as we sit
18 here today?

19 A No, I don't.

20 Q When you first looked at these, as you pointed out,
21 the fax transmittal says, Fax To: Judge Greg Holder. You
22 knew who Judge Greg Holder was?

23 A Yeah, I knew. I mean, on it's face -- I mean, he
24 is obviously a judge in Tampa; and then I think -- I think
25 he put -- He put down Circuit Judge, Hillsborough County. I

1 mean, it's right on the document; so yeah. I mean, yeah. I
2 mean, I knew it was him. I mean, I knew who he was.

3 Q Right. Did you -- Aside from the words that are
4 written on the document, did you recognize this name, Greg
5 Holder, as being someone who was a local judge?

6 A You know, Dave, again, and this is -- I mean, I
7 know this sounds like I may be out to lunch here; but
8 honestly, I want to say, Yeah, I knew he was -- But I wasn't
9 really focused on him. I mean, I didn't really pay
10 attention. I think I might have. Yeah, he's a Judge; and
11 he's in the JAG Corps. He's in the Reserves; but it wasn't
12 something, Oh, yeah it's Holder, you know. He's been in the
13 paper, no.

14 Q Okay. Fair to say you had a -- you knew who he was
15 generally, but it wasn't a focus of your attention?

16 A No, not at all. That's a fair statement.

17 Q Okay. All right. Okay. Now we're back to you're
18 sitting in your office on Monday, the 14th; and you're
19 looking at them side by side.

20 A Uh-huh.

21 Q Okay. You notice similarities; correct?

22 A Yes.

23 Q Then what do you do?

24 A May I?

25 Q Yes, sir.

1 (A brief pause was had.)

2 A Based upon my review of these documents and based
3 on the furtive nature of the way they were delivered to me,
4 the note, you know, all the things we've talked about here,
5 I placed them in an official file in the U.S. Attorney's
6 Office.

7 BY MR. WEINSTEIN:

8 Q Okay. You opened a blue sheet?

9 A Yeah. Put it to you this way. I opened the
10 matter, yes.

11 Q So chain of custody from the time you received --
12 you picked up the envelope and looked at the contents, put
13 it in your locked briefcase --

14 A Yes, sir.

15 Q -- was in your locked briefcase until you opened
16 your briefcase at the United States Attorney's Office.

17 A Monday morning.

18 Q And then you put a copy or --

19 A Well, I put what I received.

20 Q What you received, Exhibit Number 2, Exhibit Number
21 3, note and envelope --

22 A Note and envelope.

23 Q -- into some type of a file at the United States
24 Attorney's Office?

25 MR. LEE: Characterize it as an official file.

1 BY MR. WEINSTEIN:

2 Q Official file?

3 A Yeah.

4 Q Have I accurately described the chain of custody
5 then from the time that you received the documents until the
6 time you placed them in an official file in the United
7 States Attorney's Office?

8 A Yes. Yeah.

9 Q Okay. Now if you -- Were the documents that you
10 received -- Did the note which we talked about earlier that
11 appeared to be typewritten --

12 A Yes.

13 Q -- appear to be an original or a copy of that
14 typewritten note? In other words, did it have the
15 indentation --

16 A Yeah.

17 Q -- or any other indicia?

18 A The impression I had at the time was it was a copy.

19 Q Right. Fair to say to the best of your
20 recollection the note was a copy?

21 A Yes.

22 Q Okay. Does that strike you as being unusual?

23 A No. As a matter of fact, what I thought was it was
24 somebody trying to keep their fingerprints off the original.
25 That's what I thought.

1 Q Okay.

2 A As an investigative prosecutor, it was my
3 assumption; and I don't know this; but that was my guess.

4 Q Okay. Okay. Now let me move to Exhibit -- Let's
5 start with Exhibit 3 first.

6 A Yes.

7 Q Okay. The Exhibit 3 that was in the envelope --

8 A Uh-huh.

9 Q -- was it an original or a copy?

10 A Well, let me just say this first of all. This is
11 all copies. I mean, this is copy city here as we know it.
12 It was a -- The Exhibit 3, if you will, that ultimately
13 ended up in the file, the official file, referred to was the
14 original I received.

15 Q Understood. So you didn't make a copy of it --

16 A No.

17 Q -- in between -- Back to our chain of custody
18 question. Bear with me a second. You made no copies of
19 Exhibit 2 or Exhibit 3. The documents you received and the
20 note were, in fact, placed in the official file?

21 A Correct.

22 Q All right. Thank you, sir. However, those
23 documents --

24 A Yes.

25 Q -- while you didn't copy them had artifacts on them

1 commonly called copying artifacts. In other words, based
2 upon your observations and experience as a prosector, they
3 were copies?

4 A Oh, yeah. They were copies.

5 Q Both --

6 A The things I received were copies. Sure.

7 Q Okay. Okay. And in looking -- If I may direct
8 your attention, sir, to Exhibit Number 2 --

9 A Yes.

10 Q -- and forgive the vernacular, a lousy copy. What
11 we're looking at here has got copying artifacts all over it.
12 Okay?

13 A Yeah. Yeah.

14 Q Is this what Exhibit 2 looked like generally, the
15 copy that you placed in the official file?

16 A Let me just look at it.

17 Q Sure. Take your time.

18 (A brief pause was had.)

19 A The best I recall, yes. That's -- That's -- That's
20 a copy of it, yes.

21 BY MR. WEINSTEIN:

22 Q Okay. In other words, comparable -- As best you
23 can recall, Exhibit Number 2 is of comparable quality as the
24 one that was placed in the official file?

25 MR. PILLANS: Objection. We'll produce it

1 eventually, and you can compare them. It's speculation
2 on his part.

3 A Yeah. I don't know that.

4 MR. PILLANS: It's easily ascertainable.

5 A I don't know that. I mean, I don't remember. It's
6 been -- I haven't seen that original for, gee, what? Two
7 years now, or I don't know how long it's been. I can't
8 compare the quality of it with the quality of what you have
9 marked here today as Exhibit 2.

10 BY MR. WEINSTEIN:

11 Q Okay. Does the document that you placed in that
12 official file still exist?

13 A Does it still exist?

14 Q Yeah.

15 A I don't know. I assume it does. I don't know that
16 for sure. I mean, I have no personal knowledge. I don't
17 have it.

18 Q Okay. Do you know who does?

19 A I believe that Mr. Pillans has it, but I don't know
20 that either. Or Mr. -- Either Mr. Downing or Mr. Pillans.
21 I don't know.

22 MR. LEE: I'll go ahead and just say for the record
23 based on information released that I just received, I
24 probably -- I would be willing to say that it likely
25 still exists in the official files of the United States

1 Attorney.

2 MR. PILLANS: Well, I'll go on the record and say
3 it does, in fact. At least, I requested that
4 Mr. Downing retain it in those files just as he received
5 it from Mr. Del Fuoco; and he will bring it to the
6 hearing.

7 MR. LEE: I'm just trying to avoid mystery here.

8 THE WITNESS: Yeah.

9 MR. LEE: You don't need mystery here, and I chose
10 to say that so he wouldn't have to worry about saying
11 it.

12 MR. WEINSTEIN: I understand that. I appreciate
13 the clarification.

14 BY MR. WEINSTEIN:

15 Q When you pulled the documents out of the envelope,
16 Mr. Del Fuoco, were they folded?

17 A Folded? You mean like in half or -- No, I don't
18 believe that were. I think they were, you know -- because
19 they were in a -- like an envelope that was ample enough to
20 hold them, you know, without having to fold them, either
21 eight-and-a-half by eleven or bigger.

22 Q Stapled or unstapled?

23 A Jeez.

24 Q And let me take them one at a time so I have a
25 clear record. Bear with me, if you will, Mr. Del Fuoco.

1 A Sure.

2 Q Directing your attention to Respondent's Exhibit
3 Number 2 --

4 A Yeah.

5 Q -- when you pulled it out of the envelope, was it
6 stapled?

7 A Jeez. I don't remember. I don't recall whether it
8 was stapled or it was clipped. I just don't recall.

9 Q Okay. With respect to Respondent's Exhibit Number
10 3, sir, in what form with respect to the pages being
11 attached did it exist when you first received it?

12 A In what form? You mean --

13 Q In other words -- Let me make it easy. Was it
14 stapled? Was it clipped? Was it rubber banded? How were
15 the pages? How was document kept together as one contiguous
16 document?

17 MR. PILLANS: You're talking about 3 now?

18 MR. WEINSTEIN: Yes, sir.

19 A I don't recall. It could have been either of the
20 ways. I don't remember.

21 BY MR. WEINSTEIN:

22 Q Okay. Fair to say you don't remember with respect
23 to 2 or 3?

24 A Yes, that's fair to say.

25 Q Did you change the form in which the documents

1 were -- were attached in between the time you received them
2 and placing them the official file at the U.S. Attorney's
3 Office?

4 A I'm not sure I understand the question.

5 Q Okay. Let me go back, and we'll take them one at a
6 time. With respect to Respondent's Exhibit Number 2, did
7 you personally either staple or unstaple the documents? Did
8 you change its form in any way in between the time you
9 received it and placed it in the official file?

10 A No.

11 Q Okay. So if that file exists and it's in the same
12 form that you placed these documents in it, then those
13 documents are in the same form as when you received them?

14 A I don't know that. I mean, I don't know if they're
15 in the same form because I haven't, you know -- I haven't --

16 Q Fair enough. Let me rephrase. Fair enough. Let
17 me rephrase. You didn't change the form of Respondent's
18 Exhibit Number 2 either by stapling or unstapling or
19 clipping or unclipping or anything else between the time
20 that you received it and placed it in that file. True or
21 false?

22 A I don't think I did. I don't think I did. I want
23 to say I didn't but -- My answer would be I did not change
24 the form. I don't recall. I don't think I did.

25 Q Okay.

1 A I don't think I did.

2 Q Let me make it easier perhaps. As you sit here
3 today, you have no recollection of changing the form of
4 Exhibit Number 2 in any way?

5 A That's a fair statement.

6 MR. LEE: We're all sitting here assuming form
7 means the method of correlation of the document.

8 MR. WEINSTEIN: Yes. Correct. For the record what
9 I mean is how the documents were attached.

10 A No, I don't recall changing any form.

11 BY MR. WEINSTEIN:

12 Q Okay. Would it be fair to say that as you sit here
13 today, you have no recollection of changing the form of
14 Exhibit Number 3?

15 A That's fair to say.

16 Q Did you write on Exhibit Number 2?

17 A No.

18 Q Did you write or put any mark on Exhibit Number 3?

19 A No, sir.

20 Q Okay.

21 A I want you to -- I just want to say this too. I
22 tried to be very careful in terms of staying away from any
23 attempt to mark these at all, so there was no writings or no
24 highlight or anything like that. I did nothing of that
25 sort.

1 Q Okay. And forgive me if I asked you this before;
2 but into this official file at the United States Attorney's
3 Office, you placed the copy you had received of it -- of
4 Exhibit Number 2; correct?

5 A Yes.

6 Q And the copy you received of Exhibit Number 3?

7 A Yes.

8 Q And the note?

9 A Yep.

10 Q And the envelope?

11 A Yes; and as I recall, they -- They all stayed in
12 the envelope. I mean, the envelope went into the file.

13 Q Okay.

14 A The manila envelope I referred to.

15 Q And you had said previously, Mr. Del Fuoco, that
16 one thing that occurred to you based on your experience in
17 law enforcement or otherwise was that the note may have been
18 a copy because of someone's effort to avoid their
19 fingerprints being on it.

20 A That was -- That was a guess I had.

21 Q Okay. Did you or anyone else to the best of your
22 knowledge do a fingerprint analysis on the note?

23 A I've been advised it's outside the scope.

24 Q Okay. To the best of your knowledge -- Well, did
25 you or anyone else to the best of your knowledge run any DNA

1 or any other analysis whatsoever on the note?

2 (A brief pause was had.)

3 A After consultation I believe the answer would be
4 outside the scope of authorization.

5 MR. WEINSTEIN: Okay. And bear with me, Counsel,
6 because I'm going to make a record here; so we're going
7 to have a few of these in a row. Okay?

8 MR. LEE: That's fine by me.

9 BY MR. WEINSTEIN:

10 Q All right. Did you take any steps, Mr. Del Fuoco,
11 to avoid placing your own fingerprints on the note?

12 A No, I took no steps to avoid placing my own
13 fingerprints on there.

14 Q And did you take any steps to avoid placing your
15 own DNA on the note?

16 A No.

17 Q Okay. With respect to Respondent's Exhibit Number
18 2, the Purported Holder Paper, the PHP, did you take any
19 steps to avoid placing your fingerprints on the -- on
20 Exhibit 2?

21 A On -- You mean, on the original?

22 Q On the PHP.

23 A No, I did not.

24 Q Okay. Same question with respect to DNA.

25 A No.

1 Q Okay. With respect to Exhibit Number 3, the Hoard
2 paper?

3 A The original that I received? No. I took no steps
4 to --

5 Q To avoid fingerprints or DNA?

6 A No, I did not.

7 Q Okay. With respect to the envelope, any steps to
8 avoid fingerprints or DNA -- your fingerprints or DNA being
9 placed on the envelope?

10 A No. And let me just say this. I -- At the time I
11 would say that I was getting maybe five or ten tips a week
12 from people because people knew that I was doing things as a
13 corruption prosector, and so I almost viewed this as a tip.
14 I mean, this -- these -- These copies in my view were not
15 evidence that I would initiate anything on. In my view this
16 was a tip. It was -- It was no more than, you know,
17 somebody called up saying, Hey, Jeff, you need to look into
18 X, Y, Z, click. So I just want to make sure you know that
19 that was, you know -- Because, David, we get these all the
20 time, especially when the public knows, Hey, this guy --
21 This guy's, you know -- He's a hard charger, you know. This
22 is just the nature of the way things are.

23 Q Okay.

24 A If the public thinks that you're doing something
25 about corruption, you get tons of tips. If they think it's

1 business as usual, you don't hear anything. It's kind of a
2 weird thing, but that's the nature of the game.

3 Q Okay. Fair enough. Okay. Anything else about the
4 chain of custody of these documents from the time you
5 received them until the time that they were placed in the
6 official file of the U.S. Attorney's Office that we haven't
7 discussed? Anybody else touch the documents, Mr. Del Fuoco,
8 other than you? Just in that time frame now. You got them.
9 They go in the official file. Anybody else touch them?

10 A I don't believe so.

11 Q Okay. Other than, you know, general familiarity
12 with, you know, what the cover pages look like, for example,
13 could you positively identify Respondent's Exhibit 2 as
14 being identical to the Purported Holder Paper that's in the
15 file at the U.S. Attorney's Office?

16 A Positively identify? No. I can generally identify
17 it, but I don't -- I couldn't say that I could positively
18 say that your Exhibit 2 here is an exact copy of what went
19 into the file.

20 Q Okay. The same be true with respect to
21 Respondent's Exhibit Number 3?

22 A Yes. Again, there are several things that I
23 generally recall, to include the fax cover sheet.

24 Q Right.

25 A But I can't positively say that what is

1 purported -- that what is contained as your Exhibit 3 is, in
2 fact, what is in that file now.

3 Q Right. I mean, I don't remember exactly the words
4 that Mr. Pillings used earlier; but he asserted that
5 Respondent's counsel had in some fashion monkeyed with this
6 document in a couple of forms. I don't think that's exactly
7 the terms as --

8 MR. LEE: I think it was diddled.

9 BY MR. WEINSTEIN:

10 Q As the case may be; but if I put a couple in front
11 of you in different forms, you wouldn't have any way of
12 picking out which is which?

13 A No.

14 Q Okay. I've now bored you to your second cup of
15 coffee.

16 A No. No problem. I'm just a coffee guy, so I'm
17 glad you have it.

18 Q Okay. After placing the documents in the file at
19 the U.S. Attorney's Office, the official file --

20 A Yeah.

21 Q -- what's the next thing that occurred
22 chronologically with respect to these papers?

23 A May I?

24 Q Your certainly may.

25 (A brief pause was had.)

1 A I've been advised by Mr. Lee that an authenticating
2 answer would be okay, but any other type of answer would be
3 outside the scope of authorization.

4 MR. WEINSTEIN: Just so I have a clean record, with
5 respect to -- It's the position of United States
6 Attorney's Office that any conversations that you had
7 with other members of the United States Attorney's
8 Office are outside the scope -- regarding these papers
9 are outside the scope. Am I correct?

10 MR. LEE: The best way to answer that is the scope
11 that he can testify is set forth in the United States
12 Attorney Exhibit 3. There's a multitude of things that
13 would obviously be outside that definition of the scope;
14 so it's better to approach it as what's within the
15 scope; and if his response is not within one of these
16 five categories of things on U.S. Attorney Exhibit 1,
17 it's outside the scope.

18 BY MR. WEINSTEIN:

19 Q Okay. The official file to which you referred,
20 sir, is it secure?

21 A I don't know the answer to that. I assume it is,
22 but I don't know the answer.

23 Q Okay. Did you see the -- Did you ever see the
24 documents that you placed in that official file after that
25 at any point subsequently?

1 A Yes.

2 Q Okay. And when was that?

3 (A brief pause was had.)

4 A That was, if I may, on January 23rd, 2003.

5 BY MR. WEINSTEIN:

6 Q Okay. Okay. And forgive me if I asked you this.

7 Did you physically -- Did you personally physically put the
8 documents, I should say, in the official file?

9 A I don't know. I don't remember. I believe I did,
10 but I don't remember.

11 Q You may have handed them to somebody else?

12 A Yes, I may have.

13 Q Okay. What caused you to see these files -- see
14 these documents -- Excuse me -- again on or about Wednesday,
15 January 23rd?

16 A I had -- Excuse me.

17 (A brief pause was had.)

18 A I had an appointment to meet with members of Air
19 Force Offices Special Investigations.

20 BY MR. WEINSTEIN:

21 Q Okay. And did you -- Did you make that
22 appointment?

23 A It was a jointly-made appointment between me and
24 the Air Force.

25 Q Okay. So you coordinated your calendars?

1 A Correct.

2 Q Okay. Who -- Who were the OSI agents with whom you
3 spoke?

4 A I don't remember the one guy's name; but I know
5 that the lead guy, if you will, was a guy by the name of
6 Jeffery -- and I remember this because his name is Jeff --
7 Vent, V-e-n-t.

8 Q Okay.

9 A And I believe he was the detachment commander at
10 MacDill at the time.

11 Q Okay.

12 A And then he had another agent with him.

13 Q Okay. Did that -- Did that meeting come up? Did
14 it occur?

15 A Yes.

16 Q Where?

17 A At the U.S. Attorney's Office.

18 Q Okay. The agents came and met with you?

19 A Yes.

20 Q What was the purpose of the meeting?

21 (A brief pause was had.)

22 A The purpose of the meeting was to kind of make a
23 preliminary determination of, you know, what was going on,
24 what, you know, what this was about; and I wasn't sure what,
25 if anything, was here; and I wanted to see if there was any

1 way to get some confidential assistance to see what was
2 going on. I wish I could tell you more.

3 BY MR. WEINSTEIN:

4 Q Okay. That's the best you can do with the
5 constraints you're operating under?

6 A Yes.

7 Q All right. How much time elapsed from Monday the
8 14th --

9 A Yeah. Whatever the --

10 Q Yeah. The Monday, the 14th of January until you --
11 Who initiated the contact? You or OSI?

12 A I initiated the contact.

13 Q And how much time elapsed between Monday, the 14th
14 and when you contacted them?

15 A Jeez. I don't remember. It wasn't a whole lot of
16 time. I would say it was a couple of days.

17 Q Okay.

18 A But it's only a guess. I don't remember.

19 Q How long did the meeting last between you and the
20 OSI agents?

21 A Jeez. I'm guessing -- I would say somewhere
22 between forty-five minutes and an hour max.

23 Q And during -- During that meeting you -- you were
24 in possession of the documents that you had placed in the
25 official file at the U.S. Attorney's Office?

1 A Yes. I was in possession of the that file, yes.

2 Q Okay. And in that file at that time -- And by that

3 I mean Wednesday, January 23rd -- you had the Purported

4 Holder Paper; right?

5 A Yeah, PHP.

6 Q The Hoard paper?

7 A Yeah.

8 Q The note?

9 A And the envelope.

10 Q And the envelope. Okay. Did you show all four

11 documents to the OSI agents?

12 A Yes.

13 Q Okay. If -- What, if anything, did they tell you?

14 A I think that's beyond the scope.

15 Q Okay. Did you provide the OSI agents with copies

16 of any of the four documents?

17 A No.

18 Q Did they request copies?

19 A Yes.

20 Q And you declined to provide them?

21 A Correct.

22 Q Are you at liberty -- Is it within or without the

23 scope to tell me why, why you didn't give them copies?

24 (A brief pause was had.)

25 A According to Mr. Lee, that's a method of operations

1 question; and he's advised me it's outside the scope.

2 BY MR. WEINSTEIN:

3 Q Okay. Back to chain of custody again. After your
4 meeting with the OSI agents --

5 A Yes.

6 Q -- what, if anything, did you do with the four
7 documents? And by four documents, I mean PHP, Hoard paper,
8 note, envelope.

9 A They went back in the file, and the file went back
10 in a file cabinet.

11 Q Okay. Did you personally place the documents in
12 the file?

13 A I believe I did put the documents back in the file.
14 I'm not sure if I was the one who put the file back in the
15 filing cabinet, but that's generally what occurred.

16 Q Okay. Have you seen any of those four documents
17 since that time?

18 A I don't know for sure. I may have. I don't want
19 to say I haven't. My guess would be I have, yeah.

20 Q Okay. In what context?

21 (A brief pause was had.)

22 A All right. I don't recall if I, you know, dug
23 these out of the file again after my meeting with OSI and
24 looked at them. I don't think I did because of my --
25 because of my perception of the meeting with OSI. Okay.

1 That's my perception; but sometime in either the end of May
2 through the middle of June of 2002, I looked at these
3 documents again as part of the file review with a superior.

4 BY MR. WEINSTEIN:

5 Q Okay. Would that be Mr. Downing?

6 A No.

7 Q Okay. Can you identify for me who that superior
8 was?

9 A The superior was Robert Mosakowski, who is and was
10 at the time the Chief of the Tampa Division, if you will, of
11 the U.S. Attorney's Office.

12 Q Okay. Did anything -- Did anything result from
13 your review of the documents with Mr. Mosakowski?

14 A If I may?

15 (A brief pause was had.)

16 A Yes.

17 BY MR. WEINSTEIN:

18 Q And what was that?

19 A As a result of this review, I -- Well, let me put
20 it this way. I don't want to say I; but as a result of the
21 review, this file and the accompanying documents ended up
22 with Jeffery Downing.

23 Q And at that time what was Mr. Downing's position
24 within the U.S. Attorney's Office?

25 A I think he was at that time either designated as

1 the Chief of the Public Corruptions Section or he was about
2 ready to be. They were creating this section.

3 Q Okay.

4 A And Downing was going to be the chief; and I was
5 going be to the Indian, to coin a phrase.

6 Q Understood.

7 A And I believe that he may have been the chief at
8 the time, but I don't remember.

9 Q Was -- He was in any event senior to you within the
10 U.S. Attorney's Office?

11 A Well --

12 Q Is there such a thing?

13 A Yeah. Yeah. Yeah. I mean, I'm not sure if he was
14 senior to me at this time; but he was on the verge of
15 becoming senior; or he may have been. He was called a
16 chief, and I was called an AUSA.

17 MR. LEE: The seniority at the U.S. Attorney's
18 Office has more to do with position than tenure.

19 MR. WEINSTEIN: Okay.

20 BY MR. WEINSTEIN:

21 Q Was the hand off, if you will, of this file from
22 you to Mr. Downing a result of the fact that you were a
23 witness to the circumstances under which the documents were
24 delivered?

25 A I've been advised by Mr. Lee it's beyond the scope.

1 BY MR. WEINSTEIN:

2 Q Did you have any further involvement with this
3 matter in the context of your official duties at the United
4 States Attorney's Office after the meeting with Mr. Downing?

5 A I've been advised by Mr. Lee unless there's an
6 authentication basis for the question, then it's beyond the
7 scope.

8 BY MR. WEINSTEIN:

9 Q Did you have any further involvement with these
10 documents after the meeting with Mr. Downing, not in the
11 context of your duties as an Assistant United States
12 Attorney but instead as a witness?

13 A No, I did not.

14 Q Okay.

15 A Let me revise that. I'm sorry. Now you're talking
16 about subsequent to this quote, unquote hand off?

17 Q Correct.

18 A Just --

19 MR. PILLANS: You're referring to as a witness in a
20 JQC matter?

21 MR. WEINSTEIN: As a precipitant witness as that
22 term is used in the context of 2(e) and its interpretive
23 case law.

24 MR. LEE: I don't believe it has a context in the
25 context of 2(e), but I think your question was as a

1 witness other than his USA capacity.

2 MR. WEINSTEIN: Yes. Okay. I'll repeat the
3 question. I'm sorry.

4 (A brief pause was had.)

5 A Based upon that question, Mr. Weinstein, and advice
6 from Mr. Lee, I believe that an answer would be beyond the
7 scope.

8 BY MR. WEINSTEIN:

9 Q Okay. All right. Okay. From the time that -- of
10 your meeting with Mr. -- I'm sure I'll butcher the
11 pronunciation -- Mosakowski --

12 MR. LEE: You didn't butcher it. That was good.

13 A That was good actually.

14 BY MR. WEINSTEIN:

15 Q -- from that point forward, as you sit here today,
16 have you seen the documents that were placed in the official
17 file in the United States Attorney's Office; or have we
18 completed the chain of custody as it relates to you, sir?

19 A Well, there's a difference between seeing and
20 possessing.

21 Q Okay. Let's take them one at a time. Have you
22 seen them?

23 A I don't remember if I have. If I did, I saw them
24 from afar; but I have not possessed them.

25 Q Okay. Okay. So these documents have not been in

1 your possession, custody or control at least from the date
2 of the meeting with Mr. Mosakowski to today?

3 A Correct.

4 Q Now if you'll indulge me for a second to make sure
5 I have a clean record with respect to the chain of custody
6 of these documents.

7 A Yes.

8 Q Let me go backyards now for just a moment, and
9 we've been going for two hours. A little more, and we can
10 take a little break.

11 A No problem.

12 Q With respect to Exhibit 2, the PHP --

13 A Yeah.

14 Q -- would it be fair to say that you have no
15 personal knowledge whatsoever into the chain of custody of
16 this document from the time it was created to the time you
17 took it out of the envelope at the United states Army
18 Reserve Center in St. Petersburg?

19 A Absolutely. I have no personal knowledge of that
20 chain of custody at all.

21 Q Okay. You have no information as you sit here
22 today as to how this document was created; correct?

23 A Correct.

24 Q Or who created it?

25 A That's right.

1 MR. WEINSTEIN: Okay. Okay. Let's take five, if
2 we can.

3 (A brief recess was had.)

4 BY MR. WEINSTEIN:

5 Q Mr. Del Fuoco, did you make any report to anyone
6 from the United States Army about -- about the events that
7 we've discussed so far today?

8 A No.

9 MR. WEINSTEIN: Now you're not giving him Army
10 advice over there, are you, Counsel?

11 MR. LEE: No, not at all. I told you at the
12 beginning of the deposition what my role was and what I
13 was going to do, and I'm sticking by it.

14 MR. WEINSTEIN: I'm just giving you a hard time.

15 MR. LEE: I know.

16 BY MR. WEINSTEIN:

17 Q Any reports to the United States Air Force other
18 than the OSI agents that we talked about earlier?

19 A No. Not regarding your Exhibits 2 and 3 and the
20 note and the envelope, no.

21 Q Okay. Anything -- Okay. Any reports to the United
22 States Air Force regarding Judge Holder other than the four
23 documents we've talked about?

24 A Yes.

25 Q Okay. Tell me about that, please.

1 A Sometime back as I recall now, in 1998 or
2 thereabouts, I had a conversation or two -- I don't remember
3 how many -- with Mr. Lawson.

4 Q Okay. And that would be Ken Lawson?

5 A Ken Lawson, who at the time was an Assistant United
6 States Attorney in my office and who was a member of the
7 U.S. Marine Corps Reserve. Mr. Lawson and I -- It's a
8 military-guy thing; and we were both members of the, I
9 believe, the Major Crime Section at the time; and
10 Mr. Lawson -- I recall us talking generally about the fact
11 that Mr. Lawson did not have what he referred to as a pay
12 billet. I think that's what they say -- call it in the
13 U.S. -- in the Marine Corps. In other words, he wasn't a
14 drilling reservist like my guys are; and he was interested
15 in maybe transferring to the Army Reserves to come into my
16 unit so that he could get a pay slot, if you will.

17 Q He wanted a more active career?

18 A Yeah. Yeah. And Ken Lawson I've known for a long
19 time, and so we talked about his potential transfer to my
20 unit and general things like this. I don't remember --
21 Literally, I'm talking six years ago; and we talked about
22 promotions and, you know, career paths; and he told me at
23 the time that he had some information on a couple of senior
24 service colleges, one of which was the Naval War College;
25 and the other of which, as I now recall, was the Air War

1 College; and he indicated to me that he had some materials
2 relative to the Air War College; and he had even, I believe,
3 suggested -- Because I was a graduate of the U.S. Army
4 Command and General Staff Officer Course, and at the time I
5 was a major, and I believe he said -- And I don't remember
6 exactly; but it was words to the effect that, you know,
7 completing one or more of these other service schools -- And
8 they weren't the Army, and I've always been an Army kind of
9 track guy -- would be helpful generally because he had
10 checked it out. So he told me that he had some materials
11 that he would share with me, would give to me; and he did.
12 He gave me materials. Those materials to answer your
13 original question -- I believe this is your original
14 question -- were the subject of another report, report in
15 the loose sense, to the Air Force.

16 (A brief pause was had.)

17 MR. WEINSTEIN: Composite Exhibit -- What's our
18 next number?

19 THE COURT REPORTER: 6.

20 MR. PILLANS: Except that what I brought with me
21 doesn't have a copy of the envelope. If you'll give me
22 the first page.

23 MR. WEINSTEIN: Sure. All right.

24 (Marked by the court reporter as Respondent's
25 Exhibit Number 6.)

1 BY MR. WEINSTEIN:

2 Q Let me hand you what has been marked as
3 Respondent's Composite Exhibit 6. You can share with your
4 counsel.

5 MR. WEINSTEIN: Let me go ahead and make sure the
6 record's clear since we're having a conversation.

7 MR. LEE: Let me make -- He wants to compare what
8 you just gave him with the originals there that he
9 brought with him today. The originals being the ones
10 from which those were apparently made at some point in
11 time. So I don't know if you want to mark this for I.D.

12 MR. WEINSTEIN: Yeah. Let's go ahead and mark
13 that.

14 MR. LEE: You want to mark it as next in order? 7?

15 MR. PILLANS: You're going to mark the original as
16 7?

17 MR. WEINSTEIN: Right.

18 MR. PILLANS: Because now you're going to make her
19 a witness?

20 MR. WEINSTEIN: No. What we'll is do --

21 THE WITNESS: You know what? Can I clear it up?
22 I'm not trying to tell you guys how to clear your
23 business; but I think I can look at your 6 and, you know
24 identify -- I mean, if that's okay with you. I mean,
25 however you want to do it. That's up to you.

1 MR. WEINSTEIN: The envelope itself, I may want to
2 ask some questions about, the original envelope; but I'm
3 willing to, you know -- We can figure out who's going to
4 be the custodian of this original envelope when we're
5 done.

6 MR. LEE: Well, it's going to be Mr. Del Fuoco or
7 Mr. Pillans. It's not going to be the court reporter.

8 MR. PILLANS: He has been the custodian since day
9 one.

10 THE WITNESS: They've been under lock and key, and
11 I can just lock them up again if you want.

12 MR. PILLANS: I think that would be preferable to
13 me than make me responsible.

14 MR. WEINSTEIN: Let's -- Why don't you do whatever
15 you have to do to satisfy yourself that what I've given
16 you, other than the envelope, okay -- And let the record
17 reflect that --

18 What do we have here? 6? Is this 6 in front of
19 me?

20 THE COURT REPORTER: Yes.

21 MR. WEINSTEIN: -- that the first page of Exhibit
22 Number 6 and the document which -- the paper that bears
23 the court reporter's exhibit --

24 THE WITNESS: Yes.

25 MR. WEINSTEIN: -- is only a Xerox copy of the face

1 of the envelope.

2 THE WITNESS: Correct.

3 MR. WEINSTEIN: So we can agree that that's clearly
4 different because the documents that the witness has
5 brought with him today are, in fact, enclosed in an
6 envelope.

7 THE WITNESS: Right.

8 MR. WEINSTEIN: Okay. So that the record is clear
9 on that issue.

10 THE WITNESS: Okay.

11 MR. WEINSTEIN: Okay. And when the witness is done
12 looking and doing his comparison -- And you may take
13 whatever time you deem appropriate, sir -- we'd like to
14 take a quick look.

15 THE WITNESS: All right.

16 (A brief pause was had.)

17 MR. LEE: The originals are coming out of that
18 envelope and being laid right on top of the envelope,
19 and there you go.

20 THE WITNESS: All right. If I may.

21 MR. WEINSTEIN: Sure.

22 THE WITNESS: What I'm doing just for the record is
23 I'm just taking representative pages and, you know.
24 Just so you know there's an extra sheet in your exhibit
25 which is not Bate stamped.

1 MR. LEE: And identify what pages you found
2 it in between.

3 THE WITNESS: I found it between Pages KELjd 154
4 and KELjd 155, just a blank sheet. Sometimes that
5 happens, I guess.

6 MR. WEINSTEIN: Okay.

7 MR. LEE: And tell him it doesn't appear --

8 THE WITNESS: And it does not appear in the
9 original, just so you know. I don't know if there are
10 any additional pages like that. It won't take a review
11 of each, individual page; but I will note that on the
12 original I have original Bate stamps; and I'll note
13 another similar situation between Bate stamp 160 and
14 116. There's another blank page in your exhibit, but
15 that does not appear in the original.

16 MR. WEINSTEIN: Okay.

17 THE WITNESS: And these are just representative.
18 There could be more but, you know. I'm not trying to
19 create a problem here, but there's another similar blank
20 page in your exhibit between Bate stamp Pages 165 and
21 166 which does not appear in the original. Another one
22 between Pages 166 and 167 that doesn't appear in the
23 original. Another one between 167 and 168 that doesn't
24 appear in the original.

25 MR. LEE: Whoever copied them needs to clean their

1 drum.

2 THE WITNESS: And another one between Pages 170 and
3 171 that does not appear between the original; and,
4 again, as you know, I haven't gone through the whole
5 thing.

6 MR. WEINSTEIN: Okay.

7 THE WITNESS: But any way, the bottom line is what
8 you have presented to me as Respondent's Exhibit 6
9 appears to be, absent those types of anomalies, if you
10 will, a copy of the original. Now in addition, I want
11 to state for the record in the original as I found it
12 was a copy of a magazine entitled, Soldiers.

13 MR. WEINSTEIN: Okay.

14 THE WITNESS: Which I did not Bate stamp because I
15 didn't view it to be relevant. I guess I shouldn't have
16 made the call. It's dated January 1999; and it's an
17 Army Reserve publication, which has a picture of a
18 soldier on the front with a squad automatic weapon.

19 MR. LEE: I would request that we make at least a
20 copy of the first page and mark it as an exhibit so that
21 we know what we're referring to. I don't care about
22 copying the whole magazine.

23 MR. WEINSTEIN: Yeah. Sure. No problem.

24 THE WITNESS: And then also, as I discovered these
25 materials, there is what's called an Army Correspondence

1 Course Enrollment Application, which is a VA Form 145
2 front and back, VA 145, which was promulgated in January
3 1992, which was also in with the original papers inside
4 of the envelope.

5 MR. WEINSTEIN: So we'll make a copy, front and
6 back, of that document; and we'll make a copy just of
7 the cover page with consent to counsel.

8 Can I see the envelope?

9 BY MR. WEINSTEIN:

10 Q I note, Mr. Del Fuoco, that these documents that
11 we've marked as Exhibit 6 --

12 A Yes.

13 Q -- appear to fit neatly in this John F. Kennedy
14 School of Government envelope.

15 A They fit, yeah. I guess they fit neatly.

16 Q Well, let me rephrase. They fit in the envelope?

17 A They fit in this envelope, yeah.

18 Q Okay. And that this -- Is this the envelope in
19 which you received these documents from Mr. Lawson?

20 A No.

21 Q And how do you know that, sir?

22 A Well, that envelope is addressed to me at my home,
23 my former home, prior to my divorce; and as I now recall, I
24 believe I basically tossed these or stuck these papers in
25 that envelope; and they stayed in there.

1 Q Take me back to the -- Tell me in what form you
2 received these documents from Mr. Lawson.

3 A In what form?

4 Q Right.

5 A I received -- Let's see. Any way, just to go back
6 to preface all this, Mr. Lawson had indicated to me that he
7 had some materials on the Naval War College and the Air War
8 College.

9 Q Okay. He tell you where he got them?

10 A No, he did not.

11 Q Tell you what the nature of the materials was?

12 A I don't remember. He may have. I don't remember.
13 He -- As I recall, there was no academic-type material in
14 the Naval War College stuff he gave me. I think it was more
15 of a catalog, a brochure from -- Again, I don't recall
16 exactly, David. I mean, I remember generally talking to him
17 about this.

18 Q All right. I'm sorry, Mr. Del Fuoco. Is -- Are
19 there any Naval materials in Exhibit Number 6?

20 A I don't believe so. I didn't go through it in
21 depth. What I did was I Bate stamped it and got it directly
22 to Mr. Pillans; but in any event, Mr. Lawson had given me, I
23 believe, a catalog for the Naval War College that described
24 their programs because he was considering that college as
25 well. I don't remember if he told me he was enrolled in the

1 Air War College or not, but he told me that he also was
2 considering doing the Naval War College, and I remember
3 thinking at the time that he was jumping around a lot, and
4 he needed to stick with something. Of course, that was
5 just, you know -- I might have been judging him
6 unnecessarily, but he said he had some materials for the Air
7 War College and he would give them to me, and he gave them
8 to me, and what he gave me I have Bate stamped here as
9 Numbers 1 through 171 as I found them.

10 Q Later?

11 A Later.

12 Q Okay. Let's go back to your receipt of those
13 documents.

14 A Yes.

15 Q Take place at -- Where did it take place?

16 A I'm fairly certain it took place at the U.S.
17 Attorney's Office in the location we're in now, which is 400
18 North Tampa Street. It was about -- As I recall, it was
19 about five-and-a-half, six years ago that this could have
20 occurred.

21 Q Okay.

22 A I'm not sure exactly when. I know it was sometime
23 either in late '98 or early '99 but in any event --

24 Q What triggers your memory that you can be so sure
25 when it occurred?

1 A I seem to remember being in our present building in
2 the Major Crimes Section, which at time was on the 33rd
3 floor; and I'm now on the 30th floor; but you know how these
4 buildings are. You have these -- It looks like you're on
5 the same floor. It's just a different floor, and I
6 recall -- Just I recall the setting.

7 Q Okay. When did you -- When did you -- U.S.
8 Attorney's Office move from Florida Avenue to --

9 A Well, we moved from Zach Street, 500 Zach, which is
10 the Federal Building --

11 Q Right.

12 A -- to that group of offices sometime in 1998. I
13 think in the middle of the year. I don't remember exactly.

14 Q Okay.

15 A But we were in that office when he gave them to me.

16 Q Okay.

17 A I know at the time I was a major. That was my rank
18 because I was the XO de facto, as I told you before, of the
19 unit I'm in; and I seemed to recall telling Ken that I would
20 go to bat for him as the XO with the team commander and
21 also, you know, write a letter for him or do whatever I
22 could do for him to get him into the Army JAG Corps because
23 he talked about that generally; and this was all in the
24 time -- It might have been over the course of several
25 conversations. I don't remember, but that's when he gave me

1 these materials.

2 Q Okay. What did you do with them when he gave them
3 to you?

4 A Nothing. I did nothing with them. What I did with
5 them is I said, Thanks; and I don't recall exactly what I
6 did with them; but I know I didn't do anything active with
7 them. At some point -- And I don't remember when this was,
8 but at some point they ended up in the envelope that you now
9 have in front of you.

10 Q Right.

11 A That envelope, by the way, I had as a result of my
12 inquiry, obviously, into the John F. Kennedy Schools because
13 I was inquiring about various programs that graduate schools
14 of government had, like Princeton and JFK, because at the
15 time Attorney General Reno had come out with a fellowship
16 idea for mid-level or mid-career DOJ employees to get public
17 policy-type training to become more effective managers in
18 the Department of Justice; and I was interested in that
19 because I -- At one point I was a professional student; and
20 I say that facetiously, obviously; but I wanted to check it
21 out. You may remember when it happened. So I sent to the
22 Kennedy School, and I think I got something from Princeton
23 and Amos Tuck and various places. I don't remember exactly
24 when or how I put them, but they ended up in that envelope
25 because it was like an -- And you can see that's my printing

1 on the front. I just -- I don't remember doing this; but I
2 obviously wrote down, Schools, Miscellaneous; and they ended
3 up in there.

4 Q Okay. Did -- What kind of -- did -- Let me start
5 again. Did Lawson give these to you in an envelope or any
6 type of container, or were they just loose paper?

7 A I don't remember. I think they were loose. I
8 believe they were loose papers. I don't recall, and I seem
9 to recall that there were more than what is here. I mean, I
10 don't know that for a fact; but I remember thinking, Damn,
11 this is a lot of stuff. I don't have time to look at it and
12 at some point -- And I wish I could be more specific -- I
13 made the determination that this Air War College thing
14 wouldn't really help me because of what's called MEL, and
15 that stands for Military Equivalent -- Military Education
16 Level, and that's a designation that the Army has that goes
17 in your records that kind of, like, let's a promotion board
18 or whatever else know that you have, you know, dotted all
19 the I's and crossed all the T's and that you're strack and
20 you're, not only physically squared away but you got your
21 education done; and all Army officers who have anything on
22 the ball are striving for what's call an MEL 1.

23 Right now I'm at an MEL 2 as a graduate of the U.S.
24 Army Command General Staff Course, but I remember somehow
25 checking out or making the determination that the Air War

1 College wouldn't qualify me for MEL 1; and I don't know why,
2 because the Army has an attitude that their war college is
3 the best -- It is a very comprehensive program. It's up at
4 the Carlisle Barracks -- or what the issue was; but I
5 remember saying, You know what? It looks like a lot of
6 work. I'm not messing with it because I'm not going to get
7 the designation I want. At the time I was coaching my son,
8 and I was doing a lot of things. I just didn't mess with
9 it.

10 Q Did you discern that it was a lot of work by
11 looking at the Air War College papers?

12 A I just generally -- He had a stack of stuff.

13 Q Right.

14 A And I leafed through it very quickly; and I
15 thought, You know what? And then I was busy with things in
16 the office, and it just kind of went by the wayside. I just
17 bagged it. It was off my radar screen.

18 Q Okay. Did the Army college that you graduated from
19 have a writing requirement?

20 A It had several.

21 Q Papers?

22 A Yep. Matter of fact, I wrote them. I still have
23 them. Yeah.

24 Q How extensive are they compared to the Air War
25 College papers?

1 A Let me look at what you've marked as Number 2.

2 About the same, give or take. I mean, you know, I'm not
3 sure exactly but similar, yeah.

4 Q Okay. So from the time you got them from Lawson --

5 A Yeah.

6 Q -- got the materials, you looked at them but not
7 extensively.

8 A No.

9 Q Is that fair?

10 A No, not at all. I -- Because when he first gave
11 them to me -- He was real gung ho on this. He was like, you
12 know -- he -- As a matter of fact, I think he had signed up
13 for it; and he was in the program and -- And Kenny's a
14 bubbly guy. I mean, he's a real outgoing guy, you know.
15 He's a -- But based on the things that I told you, I
16 thought, you know, I'm not messing with it; but when he gave
17 me this stuff, I put it aside. As a matter of fact, I think
18 it might have been sitting in my office for a while. I
19 don't know; but ultimately, it ended up -- I obviously threw
20 it into this envelope, and that's the last it was on my
21 radar screen.

22 Q Okay. When you received this material from Ken
23 Lawson --

24 A Yes.

25 Q -- in '98, did you note the fact that the -- that

1 there was a paper in it from somebody who was a judge in
2 this town?

3 A No, I did not; and very frankly, I was
4 flabbergasted when I found it; but I did not. I did not
5 know. He didn't tell me where he got this stuff. He just
6 said, Hey, look. I got some materials, you know. You
7 interested in having them? I said, Yeah, you know; but no,
8 I did not. I did not -- He didn't tell me where they came
9 from. I didn't really -- I'm not sure I even knew that
10 there were papers quote, unquote in there. I knew it was
11 study materials. That's what I, you know -- Aside from that
12 I don't recall too much of a discussion about papers, per
13 se, when he gave them to me.

14 Q Do you know Mary Perry?

15 A No.

16 Q Didn't know her then?

17 A No, sir.

18 Q Don't know her today?

19 A No. I mean, I think know who she is now; but no, I
20 never met her, didn't know her.

21 Q Okay. Where did you -- What happened to these
22 papers from the time that Lawson gave them to you to the
23 time you discovered them?

24 A Jeez. Well, you know; and hopefully, you'll be
25 able to relate to this, you know. As I said. It was not a

1 big deal to me and --

2 Q You know what? May I -- I'm sorry. Let me see the
3 originals again. I'll give them right back to you. Let me
4 move this stuff so they don't get confused.

5 A You want you see these too?

6 Q Yeah.

7 A Like I said, the bottom line is this was not a big
8 deal to me. I was considering it; and I'm as gung ho about
9 getting promoted and everything as everybody else; but I
10 mean, I didn't strictly account for, I mean, you know, in a
11 chain of custody sense for what I did with all of them.
12 Matter of fact -- Excuse me. I -- Something tell -- There's
13 something that sticks with me is that there was more than
14 this, but I don't know. I don't know where it is; and part
15 of the reason I don't know where it is is because there was
16 a time when I was, like, living in my car for two weeks; and
17 I'll tell you about that; and I don't know where they ended
18 up. I mean, they were in my office. Ultimately, I think I
19 took them home; and they went into where I found them
20 ultimately. It was in a box that I call my Army box.

21 Q Okay.

22 A Okay.

23 Q What's that look like? A footlocker or?

24 A No. No. It's like a -- It's a big box, and I try
25 to save -- And if you've ever been in the military -- And I

1 think Ralph knows this, you know. If you're a military guy,
2 you save everything that you ever did. I've got pay
3 vouchers from, you know, back when I was a lieutenant. I
4 mean, you save it all for various reasons, awards, you know,
5 posterity, to show your kid, whatever you want to do. The
6 bottom line is I have this Army box, and this ultimately
7 ended up in there.

8 Q Okay. Lawson to Mr. Del Fuoco to your office to
9 home to the box?

10 A Let me put it to you this way. That's the way I
11 would speculate it happened. Again, it's not -- I didn't
12 treat it as a strict chain of custody type thing; but that
13 sounds like a very plausible, tinker-errors-to-chance-type
14 transition.

15 Q Okay. And where'd you find them?

16 A I found them in my storage facility --

17 Q Okay.

18 A -- that I keep or was keeping at the time a lot of
19 my belongings after I had been divorced.

20 Q Okay. So the box went from your home in Pinellas
21 County; right? To a storage facility located?

22 A In Pinellas County; and, again, no excuses. I
23 mean, I'm just trying to explain to you. I went through a
24 divorce in -- at the end of 2000, 2001; and, you know, this
25 is life. You get over it. You move on; but, you know, my

1 stuff was like on the door step. I mean, I'm talking
2 figuratively here; but my stuff went with me; and a lot of
3 it went into my storage facility. I was living in a very
4 small apartment at the time with, you know, your proverbial
5 six pack and a bag of oranges in the refrigerator; and some
6 of the stuff was in the storage facility.

7 Q And stayed there until you discovered it when?

8 A Last fall.

9 Q Fall of 2003?

10 A 2003. It was on a Sunday. I had just finished
11 playing in a baseball game in Pinellas County. I play on a
12 team, and I needed to go to the storage facility to get some
13 of my military records. First of all, I didn't know where
14 they were; and I was thinking maybe they're in that box. So
15 I went up to the storage facility after the game. I still
16 had my uniform on. I was dirty from sliding, literally,
17 went to the storage facility to get some records because I
18 was down several officer evaluation reports that my
19 commander hadn't done on me; and in order to reconstruct
20 certain things involving my career, I looked around my
21 house -- my apartment for -- Well, at the time I was living
22 in a condo -- for some of this stuff; and I thought, Well, I
23 don't have it. I'm going to go check and see if it's up in
24 the storage facility.

25 So I went to the storage facility. I think it was

1 on -- I think in a memo I wrote to Colonel Jaster. I think
2 it was the 5th of October. It was a Sunday; and, you know,
3 you go in there; and I'm climbing over stuff, pulling stuff
4 out; and I got my Army -- I found this Army box, and I
5 started to go through it, and I looked through it in the
6 storage facility because I just wanted to get the papers I
7 needed. I was looking for certain things, and I saw this
8 envelope in the box. By this envelope, I mean what you
9 marked as Respondent's 6; and it was in toward the bottom of
10 the box; and several of the papers that you have were
11 spilled out in the envelope.

12 Q Spilled out of the envelope into the box?

13 A Into the bottom of the box, kind of like half
14 hanging out. So what I did was I looked at them, and I just
15 thumbed through them real quickly, and I saw that -- It
16 dawned on me this is the stuff Lawson gave me, and I noticed
17 in the papers -- I mean, in this batch of papers -- I think
18 the first thing I saw was Mary Perry's paper; and then as I
19 went through it, I recognized other papers that I thought
20 might have been similar to the ones with Holder, the ones
21 that you have already marked here; and I thought, Hey. I
22 was kind of flabbergasted. I didn't know what to do, so I
23 gathered them all up. I put them back in this envelope. I
24 gathered some records that I needed or, you know, the
25 officer evaluation reports that were missing; and I took

1 them home.

2 The next day would have been, I guess, the 6th. I
3 went into the U.S. Attorney's Office, went through them in
4 more detail; and when I saw that they were germane to what
5 was going on, I immediately Bate stamped them, got them to
6 Downing; and I assume then Mr. Downing got them to
7 Mr. Pillans; but I Bate stamped them because I wanted to
8 make sure that they were identified.

9 Q Okay. So you sat there by yourself and put a label
10 on each page?

11 A I brought them to the U.S. Attorney's Office; and I
12 had Cindy Cole, who is one of our paralegals, help me figure
13 how to make Bate stamps; and I Bate stamped them; and I put
14 them on; and I put them on in the order that they were
15 discovered. I didn't try to sort them all out. I Bate
16 stamped them, put them in.

17 Q Okay. And so because you've brought the originals
18 here today, you gave them to Mr. Downing; and he returned
19 them to you?

20 A No. And I'm trying to reconstruct the sequence of
21 events. I called Mr. Downing, and I told him about what
22 I -- because I was like -- I'm telling you. I was like -- I
23 was flabbergasted. I was flabbergasted because -- and
24 immediately what went through my mind is somehow -- I mean,
25 I didn't know what was going on. I mean, I was thinking,

1 Hey -- The first thing I'm thinking is, I'm getting set up.
2 I mean, really, you know. I'm very serious and the -- I
3 also thought, Well, I wonder, you know -- I wonder if
4 Lawson's got anything to do with this, and I had no evidence
5 that he did. As a matter of fact, I think, at the time I
6 found the originals he wasn't even in Tampa. I think he was
7 up in D.C. I don't know; but any way, the bottom line is I
8 said, Hey, man. I got to turn these over, so I Bate stamped
9 them, and they went to Downing.

10 Q Okay.

11 A That's what happened.

12 Q How did you get them back?

13 A Well, I didn't actually give them to him. What I
14 did was that I believe I went to Downing's office. I told
15 him what I had. I believe he called Mr. Pillans. He made a
16 copy of what I had.

17 Q Downing?

18 A Yes. And then I was instructed to put them under
19 lock and key and hold them as the custodian, which I did.

20 Q Okay. And do you have any knowledge what happened
21 to them after that?

22 A What happened?

23 Q After you -- After Downing made copies, what
24 happened to the copies?

25 A His copies?

1 Q Yeah.

2 A I don't know. I assume that his copies ultimately
3 ended up being the copies you have, but that's an
4 assumption.

5 MR. LEE: Don't assume. Just tell him what you
6 know.

7 A I don't know.

8 BY MR. WEINSTEIN:

9 Q Mr. Del Fuoco, what -- When you said earlier, you
10 know, one of the things that occurred to you was that you
11 were being set up. What do you mean by that?

12 A Again, I was flabbergasted when I found them and
13 saw the relevance and --

14 Q It seemed -- It seemed to you that this was an
15 extremely unusual coincidence?

16 A Extremely. Absolutely. And then, you know, I was
17 wondering whether Downing -- not Downing -- Mr. Lawson had
18 anything to do with it; but, again, as I said, there's
19 nothing pointing to Mr. Lawson doing this or being involved
20 in the original dump under my door; and at the time I just
21 thought it was bizarre; but I also felt that I had an
22 obligation to turn them over; and so I did.

23 Q Okay. Have you performed any type of a side-by-
24 side comparison between the documents that are in front of
25 you marked as Exhibit 6 and the PHP marked as Exhibit 3?

1 A No.

2 Q Okay. Do you know whether anybody else has?

3 A I don't know.

4 Q Have you ever had a conversation with Mr. Lawson in
5 this matter?

6 A No. No. As a matter of fact, Mr. Lawson and I
7 never have discussed this.

8 Q Okay.

9 A I've had contact with Mr. Lawson, but it's -- I've
10 never talked to Mr. Lawson, nor has he talked to me.

11 Q Have you and Mr. Lawson ever had a conversation
12 regarding Gregory Holder?

13 A Nope. No.

14 Q Okay. The storage facility where this was found,
15 can you tell me the name of it?

16 A Jeez. I can't remember the name now. I don't
17 recall the name, but I can get it. I can get it.

18 Q If you wouldn't mind. How long have you had
19 that -- that facility, sir?

20 A Jeez. About -- This is a guess, about a year-
21 and-a-half, about a year-and-a-half. I had moved from an
22 apartment that I was living in originally when I was
23 divorced to a condo that I bought prior to moving into the
24 home I'm in now; and that storage facility was used for
25 excess junk, if you will.

1 Q Okay. Did you have the storage facility when you
2 had the apartment?

3 A No, I did not.

4 Q You got it when you got the condo?

5 A Yes.

6 Q Okay. And do you recall when you purchased the
7 condo? Is that a good point of reference temporally?

8 A I recall getting the storage facility after I
9 bought my condo, and I bought it in -- Jeez. I think in the
10 fall of 2001.

11 Q Okay. Still have it today?

12 A No. I sold it.

13 Q Okay. Still have the storage facility today?

14 A Yes.

15 Q What street is it on?

16 A It's on Route 19 in north Pinellas County.

17 Q Okay. How -- Is it one of these storage facilities
18 that have garage-door-type --

19 A Yeah.

20 Q -- access from the outside?

21 A Yes, from the outside. There's like a locked gate,
22 and I recall the day that I went out there there -- There
23 had been a lightning storm, I believe. Something was going
24 on because I remember playing in this game, and there was
25 rain, and the gate had been blown out by a lightning strike,

1 so somebody on the premises let me in the door.

2 Q And then your individual storage lock, Mr. Del
3 Fuoco, is locked with?

4 A A padlock.

5 Q Key or combination?

6 A Combination.

7 Q Okay. Anybody else with access to that facility?

8 A My wife has access to the facility.

9 Q Current wife?

10 A Yes.

11 Q Kids?

12 A No. No kids.

13 MR. WEINSTEIN: All right. Why don't we -- We
14 wanted to have some copies made.

15 THE WITNESS: Yeah. You want to copy the --

16 MR. WEINSTEIN: We can do that afterwards.

17 MR. PILLANS: The first page is the magazine; and
18 the second document, the application.

19 MR. WEINSTEIN: So leave two spaces, if you will.
20 And then we want -- 6 -- That'll be 7 and 8, and we'll
21 make Mr. Del Fuoco's affidavit as 9. Does that make
22 sense?

23 For the record it's entitled, Soldiers. At the
24 bottom it has, The Soldier's Almanac. The top, right
25 has the date January 1999.

1 MR. LEE: That'll be just the cover or the whole
2 magazine?

3 MR. WEINSTEIN: Just the cover. And then 8 would
4 be the document entitled, Army Correspondence Course
5 Enrollment Application. It's a one-page document, front
6 and back; and so we'll copy the front and back and make
7 that Composite Exhibit 8. Thank you, sir. 9 is the
8 affidavit of Lieutenant Colonel Jeffrey J. Del Fuoco, a
9 two-page document. It's dated 10 March 2003.

10 (Marked by the court reporter as Respondent's
11 Exhibit Number 9.)

12 BY MR. WEINSTEIN:

13 Q Take a moment; and take a look at Number 9, please,
14 Mr. Del Fuoco?

15 A All right. Okay.

16 Q You recognize this document?

17 A Yes, sir.

18 Q What do you recognize it to be, sir?

19 A This is an affidavit that was prepared in
20 conjunction with an investigation that was being
21 completed -- done by Colonel Leta of the Air Force Reserve.

22 Q Did you speak with Colonel Leta?

23 A Yes, I did speak with him prior to executing this
24 document.

25 Q Okay. With respect to -- Let me digress for a

1 second, if I may.

2 A Okay.

3 Q With respect to the original documents which my
4 co-counsel has got in front of him right now and correspond
5 to Exhibit Number 6 --

6 A Yes.

7 Q -- did you -- Have you done anything with respect
8 to these documents in terms of stapling or unstapling or
9 clipping or unclipping anything at all to alter the form?

10 A No. Those documents were Bate stamped as I found
11 them; and boom, as I recall.

12 Q Okay. And from the time you received them from Ken
13 Lawson until today, have you ever stapled or unstapled or
14 clipped or unclipped; or did you just throw them in your
15 office and --

16 A I don't know. I don't know. I got those from Ken
17 Lawson, like I said, about at least, at least about five to
18 five-and-a-half years ago.

19 Q Right.

20 A And I don't recall. As I do recall, I thought
21 there were more.

22 Q Right.

23 A They could have been lost. I mean, you know, I did
24 remember, though -- And you need to know this; and I believe
25 I told Mr. Pillans this -- In 1999 a colleague of mine who

1 is a partner in a firm in Pittsburgh by the name of William
2 J. Walls, he and I were on active duty together. We were in
3 the Reserves together. We worked as Deputy Attorneys
4 General with the Organized -- We worked the New Jersey
5 Division of Criminal Justice together. We're longtime
6 friends.

7 At the time Mr. Walls was a lieutenant colonel in
8 the Reserves in Pennsylvania, and we all stay close and
9 Mr. Walls -- I don't know if he was enrolled in the Air War
10 College or he was contemplating it. I don't remember, but I
11 recall telling Mr. Walls in a phone -- I believe it was a
12 phone conversation -- that I had some materials -- This is
13 back in 1999 now -- that had been given to me by a guy in
14 the office on the Air War College, and Walls asked me to
15 send him the materials, and I recall sending Mr. Walls -- I
16 don't remember what materials. I don't remember if it was
17 all of them. I don't remember, you know, if it's some of
18 what you guys have here; but I remember sending Mr. Walls
19 the materials.

20 Q Okay.

21 A I also remember faxing some of the materials to
22 Mr. Walls; but, you know, I don't believe he ever completed
23 the Air War College; and I don't think he -- Well, I don't
24 believe he ever completed it; but these were the things that
25 Lawson had given me; and the reason I bring that up is, One,

1 I think you need to know that, obviously; and, Two, you
2 know, in the process of faxing or, you know, I don't
3 remember if I took staples out. I don't remember. That's
4 the bottom line. Something tells me there were more
5 documents than what we have here, but I could be wrong. I
6 handle a lot of documents in the U.S. Attorney's Office, but
7 I did send Mr. Walls a number of the documents that Lawson
8 gave me.

9 Q Do you know whether the documents that you believe
10 you sent to Mr. Walls included the PHP?

11 A I don't know. I don't know. I don't believe
12 that -- Well, let me put it to you this way. When this came
13 to mind for me, I contacted Mr. Walls; and I said, Hey,
14 look. Did I send you some stuff? And he goes, Yeah. He
15 said, Yeah. So I asked him to look for the items I sent
16 him, and he told me in a subsequent conversation that he has
17 the items.

18 Q Okay.

19 A And -- And that he has an original, I guess, a note
20 from me with a date and an envelope I mailed them in; and
21 that's what I know.

22 Q Okay.

23 A I don't know if -- I don't know if he's got the
24 paper. I could have swore that I faxed him some of these
25 documents; and then I think I made the determination, Hey,

1 man, it's too much stuff to fax, because I'm talking -- So I
2 put them in an envelope and mailed it to Pittsburgh.

3 Q Okay. The date -- The note has a date? Did he
4 tell you what the date was?

5 A I don't remember.

6 Q Sometime in '99?

7 A Sometime in '99, as I recall.

8 Q Okay. And your conversation with Mr. Walls about
9 this occurred when, sir? Most recent conversation where he
10 confirmed to you that he had some of the materials?

11 A Like January or February of this year because, you
12 know, it's one of these deals where, you know, you find this
13 stuff. I gave it to Downing. It gets to Mr. Pillans. It
14 gets to you; and I'm laying there thinking about this
15 because I'm, you know -- I'm still kind of, you know, what's
16 going on here? And it came to mind as I was laying, looking
17 at the ceiling at three o'clock in the morning one time,
18 Hey, wait a minute. Did I sent some stuff to Bill? So I
19 called him, and he said he generally remembered, but he
20 would look for them and voila. He found some items, and I
21 told Mr. Pillans about it.

22 Q Okay. But by January or February of 2004, Mr. Del
23 Fuoco, when you had your conversation with him, this case,
24 if you will, this proceeding was ongoing; right?

25 A Yes.

1 Q Did you ask Mr. Walls when he found this stuff
2 whether it included a copy of the PHP?

3 A I did, and I think he told me he did not, but I
4 told him to look again because I thought I had faxed part of
5 the items to him, and I don't know if he has all the stuff
6 that was sent, but I don't remember -- Mr. Weinstein, I
7 don't remember. All I know is I sent him a bunch of stuff
8 that Lawson had given me on the Air War College.

9 Q Right. Do you know from any sources as you sit
10 here today whether Mr. Walls has been able to locate in his
11 possession, custody or control a copy of the PHP?

12 A I don't know. I don't know that he has. I don't
13 know that he hasn't, but I know there was a ton of stuff. I
14 don't know if this is all of it, but it could be. I don't
15 know.

16 MR. WEINSTEIN: How do you feel about a little trip
17 to Pennsylvania?

18 MR. PILLANS: I do think I talked to him. I talked
19 to him. I'll have to review my notes.

20 MR. WEINSTEIN: Nothing, huh?

21 MR. PILLANS: If there was, he'd be on the list.

22 MR. WEINSTEIN: Yeah. I figured.

23 MR. PILLANS: I'll have to go out and check the
24 memorandum I made of my conversations with him.

25 MR. WEINSTEIN: Yeah.

1 THE WITNESS: I mean, I wish I know -- I wish I
2 could -- I wish personally I could clear it up. This is
3 what I know.

4 MR. WEINSTEIN: Okay.

5 MR. PILLANS: Can you tell me about how much more
6 you got?

7 MR. WEINSTEIN: Thirty, hoping.

8 MR. PILLANS: If it's more than thirty, you need to
9 let me know. I need to make alternative arrangements.
10 I've got a 4:45 plane now. 4:55.

11 MR. WEINSTEIN: Well, what are our options? Finish
12 it by telephone?

13 MR. PILLANS: No. I want you to finish it; but if
14 you can't finish by the next thirty minutes, I want --

15 MR. WEINSTEIN: Well, we'll have our staff see what
16 the next flight is.

17 MR. PILLANS: Okay.

18 MR. WEINSTEIN: I'll try my best.

19 MR. LEE: Also, our policy is single appearance for
20 a deposition and single appearance for that. We need to
21 finish this.

22 (A brief interruption was had.)

23 BY MR. WEINSTEIN:

24 Q Mr. William J. Walls, W-a-l-l-s?

25 A Yes, sir.

1 Q He with a law firm in Pittsburgh?

2 A Yes, he is.

3 Q Okay. What's the name of the firm, please?

4 A Marshall Dennehy.

5 Q Spell that last --

6 A Marshall I think is M-a-r-s-h-a-l-l.

7 Q Okay.

8 A Dennehy, D-e-n-n-e-h-y, I think.

9 Q Okay. Do you have an address or phone number of

10 Mr. Dennehy?

11 A You mean Walls?

12 Q Walls, rather. I'm sorry.

13 A I know we're all going gaga here. I don't have an

14 address. I got a phone number, but it's in my office.

15 Q Okay. Would you get it to me, please?

16 A Yes.

17 Q All right. In directing your attention to the

18 second paragraph of your affidavit, Respondent's Number 9,

19 sir --

20 A Yeah.

21 Q -- in this paragraph I note that you said that the

22 envelope; and then you have a couple of different versions,

23 if you will, of what the note says.

24 A Yeah.

25 Q Okay. At the time you gave your affidavit, how

1 come -- Why didn't you know what the note said?

2 A I'm sorry. At the time --

3 Q You gave the affidavit --

4 A Yeah.

5 Q -- why was there some, you know -- Why was there
6 some uncertainty regarding the phraseology of the note?

7 A I guess, similar to what I've testified today, I'm
8 trying to recall. I didn't -- I didn't have it in front of
9 me.

10 Q Okay.

11 A So I mean, you know -- I mean, at the time this
12 affidavit had been given, just so you know --

13 Q Yeah.

14 A -- I didn't have these things. I mean, this was --
15 This wasn't shown to me or anything like that.

16 Q Okay. Where did the interview take place which
17 gave rise to this affidavit? Telephone or in person?

18 A I think partly in person and partly on the phone;
19 and Mr. Downing, I believe, was present. I think -- I think
20 Colonel Leta came down here -- He's an Assistant U.S.
21 Attorney in Atlanta -- came down here. I went out to lunch
22 with him and Downing. We talked about what I knew; and then
23 Colonel Leta, as I recall, he prepared this. He prepared
24 it, and then I looked at it. I said, Yeah, that sounds
25 right; and I signed it.

1 Q Okay. You didn't make any changes to what Leta
2 sent to you?

3 A Well, I might have made some minor -- I don't
4 remember. I might have made some minor changes, but
5 that's -- I signed it.

6 Q Okay. Downing having been present when you went to
7 lunch with Leta, how come nobody checked the note to see
8 exactly what it said?

9 A I don't know.

10 (A brief interruption was had.)

11 MR. WEINSTEIN: We'll wait for you, Charlie.

12 MR. PILLANS. Okay.

13 (A brief recess was had.)

14 (Respondent's Exhibit Number 10 was marked by the
15 court reporter.)

16 BY MR. WEINSTEIN:

17 Q Did there come a point in time when you learned
18 that the note and the envelope were no longer available?

19 A Yeah. Yes.

20 Q Okay.

21 A I did. There was a time when I was made aware of
22 the fact that the note and envelope were no longer
23 available.

24 Q As you sit here today, is -- To the best of your
25 knowledge, sir, the note and envelope are lost; correct?

1 A I don't know. I mean, I -- Based on what I know,
2 which is not a whole lot at this point, aside from, you
3 know, what I've told you, I would assume that; but it's only
4 an assumption.

5 Q All right. Okay. Directing your attention to the
6 last paragraph of the bottom of Page 1 of Exhibit Number 9,
7 sir --

8 A Yes.

9 Q -- you say in the affidavit that some of the MPs at
10 the facility which we've been discussing, the Army Reserve
11 facility, work in Hillsborough County Sheriff's Office. Can
12 you tell me who those folks are?

13 A I don't know who they are. I have heard
14 scuttlebutt that a lot of local cops in that MP unit include
15 sheriff's deputies, and you'll note that I said I believe --

16 Q Right.

17 A -- that some are Hillsborough deputies. I don't
18 know that; but I can tell you this; and based on my
19 experience in the Army in general, that's -- It just follows
20 suit. 95 Bravo is the MP MOS, and there are a ton of 95
21 Bravos in law enforcement. As a matter of fact, because of
22 all those 95 Bravos are in Iraq right now, we're --

23 Q Short over there?

24 A -- we're short.

25 Q Is that -- Is that a piece of information that you

1 brought to Leta's attention or vice versa, sir? In other
2 words, the information that there are folks who potentially
3 work for the Hillsborough County Sheriff's Office who would
4 have had access to that facility?

5 A I may have speculated in that regard to him. I may
6 have speculated in that regard to Downing. I don't know how
7 that got into the mix of Leta's perception to put it in here
8 but --

9 Q Right.

10 A -- I thought, Yeah, it's very possible.

11 Q Okay. You don't have any specific information,
12 however. You're just speculating on that?

13 A Let me put it to you this way. It's educated
14 speculation.

15 Q Okay. Fair enough. Do you -- Are you aware of
16 anyone who had access to that Reserve facility who worked in
17 the Hillsborough County Courthouse?

18 A By name, no.

19 Q Okay.

20 A By possibility, completely possible.

21 Q Sure. Understood; but by name, no?

22 A No.

23 Q Name Rocky Rodriguez mean anything to you?

24 A I know who he is.

25 Q Any military ties with -- are you aware of? That

1 you are aware of, I should say.

2 A Not that I know of, but I know who he is.

3 (Marked by the court reporter as Respondent's
4 Exhibit Number 11.)

5 BY MR. WEINSTEIN:

6 Q Okay. Directing your attention to Respondent's 11,
7 please, sir --

8 A Yes.

9 Q -- may I ask you to look at it and tell me if you
10 recognize it?

11 A I recognize it.

12 Q And what do you recognize it to be, sir?

13 A I recognize it as a note -- not a note -- an actual
14 military letter that I drafted for Colonel Jaster, who at
15 that time, I believe, was the Executive Judge Advocate
16 General to the U.S. Air Force.

17 Q How did you come to write this letter, sir?

18 A Colonel Jaster called me directly to ask me if I
19 would provide a statement as to how I came across the -- for
20 what I'll use loosely as the Lawson materials.

21 Q Okay.

22 A And that was the result of that request.

23 Q Did you have a conversation with Jaster?

24 A Briefly.

25 Q Anything in that conversation that's not in this

1 letter?

2 A No.

3 Q Have you had any conversation with anyone in the
4 Air Force subsequent to this letter?

5 A No, not at all.

6 Q Okay. Why is this -- Why did you choose to write
7 this letter in your capacity as a lieutenant colonel in the
8 Air Force as opposed to private citizen or Assistant United
9 States Attorney?

10 A Well, let me put it to you this way. I had a
11 direct request from the Judge Advocate General of the Air
12 Force to me. I was talking to an active-duty colonel who
13 was calling on behalf of a major general. I felt it was a
14 military thing; and because it went to, you know, this whole
15 notion, Hey, you want to get into the War College, you know,
16 this whole thing, I wrote it as a military guy --

17 Q Okay.

18 A -- and as the local -- the commander of my unit. I
19 mean, I'm the commander.

20 Q Are you aware of any efforts by the United States
21 Army or the United States Air Force to identify the person
22 who placed these documents -- And by that I mean Exhibits
23 Number 2 and 3 -- in your U.S. Army Reserve office?

24 A Am I aware of any efforts?

25 Q Yeah.

1 A I'm not aware of any active efforts. I am aware of
2 an attempt by me to initiate that on -- I believe it was
3 January 23rd of 2002 when I met with OSI.

4 Q Okay. That was part of the purpose of meeting with
5 OSI --

6 A Yes.

7 Q -- was to see if they would assist in identifying
8 the person?

9 A Or assist just in general, you know, what's going
10 on.

11 Q And they -- They were not inclined to do so?

12 A Let me put it to you this way, Mr. Weinstein. They
13 were inclined to do so, but I felt that their inclination
14 may unfairly at the time prejudice Colonel Holder.

15 Q Okay. Other than that January 23rd meeting, are
16 you aware of any other efforts by -- And I understand you
17 can't talk about what went on within the U.S. Attorney's
18 Office, so I'm trying to walk around that --

19 A I understand.

20 Q -- based upon the scope determination. Are you
21 aware of any other efforts, other than that which you can't
22 talk about because of the scope determination, to try and
23 locate or identify the person who slipped these or placed
24 them in your office?

25 A No, I'm not aware of any other efforts.

1 Q As you sit here today, Mr. Del Fuoco, do you have
2 any idea who put these documents in your office?

3 A No. All I can do is speculate, and I've -- I've
4 speculated on an infinitum, and I am frankly kind of
5 baffled. My speculation has ranged, you know, from Ken
6 Lawson who was in Washington at time -- And that's just
7 complete ridiculous speculation because I have no evidence
8 of that -- through and including, you know, potential
9 political opponents of this guy. I don't know. I just
10 don't know.

11 Q You do know from -- from your personal knowledge
12 that Judge Holder has got enemies in this town?

13 A I have read that, yes.

14 Q Do you know Dennis Alvarez?

15 A No.

16 Q Do you know who he is?

17 A I know who he is.

18 Q Do you know Robert Bonnano?

19 A No, I don't.

20 Q Do you know who he is?

21 A Yes, I do.

22 Q Do you know that Judge Holder's been responsible
23 for a number of judges losing their positions in this town?

24 A I have read that, yes; and as a matter of fact,
25 that has definitely been part and parcel of the publicity

1 surrounding everything else. I don't know any of those
2 people. I do know that Colonel -- Judge Holder has from
3 reports been a crusader against public corruption. In that
4 regard we have similar goals, and I just don't know. I
5 don't know what happened.

6 MR. WEINSTEIN: If I can take a couple of minutes
7 and consult with co-counsel, I think we're about done.

8 (A brief recess was had.)

9 BY MR. WEINSTEIN:

10 Q With respect to these documents, the original of
11 what we have marked as Exhibit Number 6 --

12 A Yes.

13 Q -- you didn't -- You didn't look at them very hard
14 at all, just a cursory look, Mr. Del Fuoco, when Lawson gave
15 them to you; right?

16 A Yeah. It was a stack of stuff, and I don't
17 remember whether he gave it to me all at once or he gave it
18 to me in part or parcels, but I didn't -- I just, yeah, hey,
19 you know, if I'd do it, I got some materials to review.

20 Q As you sit here today, Mr. Del Fuoco, are you
21 positive that Lawson -- that among the documents Lawson gave
22 you was the Mary Perry paper and the PHP?

23 A Let me put it to you this way, David. I am
24 positive, David, that what I've marked here he gave me; and
25 as I understand -- well, not understand. They are in there.

1 The Mary Perry paper, I didn't even know her. I mean, I
2 didn't know Mary Perry from shineola. I mean, I didn't know
3 Holder at the time; and I didn't even know there were papers
4 in there; but I'm positive that the papers, the entire
5 batch, 1 through 171, those are -- Mr. Lawson gave me those.

6 Q Okay. And they sat around in your office for some
7 period of time at the U.S. Attorney's Office?

8 A Yes. Yeah.

9 Q I just want to make sure I understand what your
10 recollection is, Mr. Del Fuoco; and I know you won't let me
11 shake it from you, any way.

12 A No. That's fine.

13 Q The reason that you -- You don't have an
14 independent recollection that Lawson gave you either the
15 Mary Perry paper or the PHP contemporaneously? In other
16 words, you don't remember in 1998 that that's --

17 A All I remember is he gave me a bunch of stuff. It
18 was on the Air War College and those materials I found in
19 that storage locker. I am confident that Mr. Lawson gave me
20 these materials, but no. I mean, I can't parse out for you,
21 Oh, yeah, I remember back in '98, just by way of example,
22 that Lawson gave me Lesson 14. I'm referring to KELjd 1.
23 No. He gave me papers.

24 Q Right. Couldn't parse out 1 or Perry or the PHP?

25 A No.

1 Q All you know is that you found these documents in
2 this envelope in your storage area?

3 A Correct.

4 Q Anybody else give you any Air War College materials
5 that you can recall?

6 A No.

7 MR. WEINSTEIN: Okay. Housekeeping. I don't have
8 any further questions for the witness, but we have a
9 housekeeping issue. We haven't seen these originals
10 before. We'd like the opportunity for our document
11 examiner to examine them.

12 MR. LEE: Somebody's got to decide to take custody,
13 other than the U.S. Attorney's Office; and my
14 understanding is Mr. Del Fuoco has no secure place to
15 keep these, except the U.S. Attorney's Office; and I
16 don't mean to put the pressure on Mr. Pillans; but if
17 the document examiner is going to examine them for the
18 purposes of the JQC, it would seem appropriate that
19 counsel for the JQC take them.

20 MR. PILLANS: I'll take them.

21 MR. LEE: And I apologize.

22 MR. PILLANS: I didn't want them, but I'll take
23 them.

24 MR. WEINSTEIN: Okay. And, Charlie, we can -- To
25 save the expense of someone parking in your office, when

1 you're down for depositions next week, can you bring these
2 with you; and we'll just do it at the same time?

3 MR. PILLANS: (Nodded affirmatively.)

4 MR. LEE: Let the record reflect that the original
5 KELjd 1 through 117 as returned to me by Respondent's
6 counsel are going into the original envelope in which
7 they were withdrawn earlier today and that the -- and
8 after we copy the Soldiers magazine cover and the
9 two-page document, that will be placed back in the
10 envelope as well.

11 Do you want to have that happen on the record?

12 MR. PILLANS: I don't want to stay around, so get
13 those copied right away.

14 MR. WEINSTEIN: I guess the only other option -- I
15 really don't care -- I can have someone from our staff
16 come take possession of them and put them in our safe
17 until you return.

18 MR. PILLANS: I'll do it.

19 MR. LEE: All I'm saying is keep the court
20 reporter. I want to put these back in the envelope on
21 the record after you copy them.

22 MR. WEINSTEIN: All right. Well, let me get them
23 copied.

24 (A brief recess was had.)

25 MR. PILLANS: For the record I have no questions.

1 MR. LEE: Let the record reflect that the original
2 of the Soldiers magazine, which is Exhibit 7, and the
3 original of the Army Correspondence Course Enrollment
4 Application, which is Exhibit 8, are being inserted back
5 into the envelope from which they were drawn this
6 afternoon. The envelope and its contents are being
7 tendered to Mr. Pillans as counsel for JQC.

8 MR. WEINSTEIN: As a housekeeping issue, the Army
9 Correspondence Course Enrollment Application was a one-
10 page exhibit copied front and -- which has a front and
11 back. There wasn't a double-sided copy available, so
12 we're reducing that one-page exhibit to a two-page, and
13 I'm providing them to the court reporter.

14 (The deposition concluded at 4:06 p.m.)

15 (Respondent's Exhibit Numbers 7 and 8 were marked
16 by the court reporter.)

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1 CERTIFICATE OF OATH

2 STATE OF FLORIDA)

3 COUNTY OF HILLSBOROUGH)

4

5 I, Penny M. Appleton, Court Reporter, certify that
6 Jeffrey J. Del Fuoco personally appeared before me and was
7 duly sworn.

8 Witness my hand and official seal this day of
9 September, 2004.

10

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Penny M. Appleton, RPR

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1 C E R T I F I C A T E

2 STATE OF FLORIDA

3 COUNTY OF HILLSBOROUGH

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5 I, Penny M. Appleton, Court Reporter for the Circuit
6 Court of the Thirteenth Judicial Circuit of the State of
7 Florida, in and for Hillsborough County,

8 DO HEREBY CERTIFY, that I was authorized to and did,
9 report in shorthand the proceedings and evidence in the
10 above-styled cause, as stated in the caption hereto, and
11 that the foregoing pages constitute a true and correct
12 transcription of my shorthand report of said proceedings and
13 evidence.

14 IN WITNESS WHEREOF, I have hereunto set my hand in the
15 City of Tampa, County of Hillsborough, State of Florida,
16 this day of September, 2004.

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Penny M. Appleton, RPR

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1 RE: INQUIRY REGARDING JUDGE HOLDER

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3 ERRATA SHEET

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5 I, JEFFREY J. DEL FUOCO, have read the foregoing
6 deposition given by me on August 27, 2004, in Tampa,
7 Florida. Corrections should be made as follows:

8 PAGE: LINE: ERROR/AMENDMENT AND REASON THEREFOR:

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18 Subject to these corrections, my testimony reads as
19 given by me in the foregoing, signed this day of
20 _____, 2004.

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Jeffrey J. Del Fuoco

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